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# **Finance & Tax Committee**

**Friday, March 31, 2006  
8:30 AM – 12:00 PM  
404 HOB**

**MEETING PACKET**



# **The Florida House of Representatives**

## **Fiscal Council**

### **Finance & Tax Committee**

**Allan G. Bense**  
Speaker

**Fred Brummer**  
Chair

## **AGENDA**

March 31, 2006

8:30 AM – 12:00 PM

404 HOB

- I. Chairman's Remarks
- II. **HJR 353** – Increased Homestead Exemption by Lopez-Cantera
- III. **CS/HB 667** – Credit Counseling Services by Hasner
- IV. **HB 709** – Court Costs for Drug Court Programs by Quinones
- V. **HB 789** – Damage Prevention and Safety for Underground Facilities by Murzin
- VI. **CS/HB 821** – Community Contribution tax Credit Program by Goodlette
- VII. **HB 857** – Insurance Premium Tax by Mahon
- VIII. **CS/HB 1031** – Pawnbroking by Kyle
- IX. **HB 1039** – Miami-Dade County Lake Belt Area by Garcia
- X. **HB 1189** – Pasco County by Legg

- XI. **HB 1203** – St. Johns Water Control District by Poppell
- XII. **HB 1207** – Indian River Mosquito Control District by Poppell
- XIII. **CS/HB 1233** – Early Learning by Ausley
- XIV. **HB 1269** – Local Occupational License Taxes by Cusack
- XV. **HJR 7037** – Two-thirds Voter Approval to Increase State Tax by  
Judiciary Committee
- XVI. **PCB FT 06-07** – Assessment of Homestead Property by Finance &  
Tax Committee
- XVII. **PCB FT 06-08** – Expenditure Limits by Finance & Tax Committee
- XVIII. **PCB FT 06-09** – Property Tax Administration
- XIX. Adjourn





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 353 Increased Homestead Exemption  
**SPONSOR(S):** Lopez-Cantera and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Monroe <i>KDM</i>	Diez-Arguelles <i>[Signature]</i>
2) Local Government Council			
3) Fiscal Council			
4)			
5)			

### SUMMARY ANALYSIS

This bill is a joint resolution, proposing an amendments to the Florida Constitution to raise the current homestead exemption from \$25,000 to \$50,000.

The Division of Elections estimates the cost to the state to be approximately \$50,000 to meet constitutional requirements to publish this joint resolution to the electorate.

The Revenue Estimating Conference has estimated that if the electorate was to approve this constitutional amendment and millage rates were to remain unchanged, local governments would experience a tax loss of \$2.1 billion on the 2008 tax roll.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower Taxes** - Taxpayers who have homestead property and benefit from the increase in the homestead exemption will pay lower taxes. However, this will be a function of a shift in who bears the tax burden and other taxpayers will bear an increased tax burden.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background:

**Property Taxation in Florida** – The ad valorem tax or “property tax” is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. The taxable value of real and tangible personal property is the fair market value of the property adjusted for any exclusions, differentials or exemptions. Tax bills are mailed in November of each year based on the previous January 1<sup>st</sup> valuation and payment is due by the following March 31.

Ad valorem tax continues to be a major source of revenue for local governments in Florida. In FY 2002-03 (the last year for which certain fiscal information is available) property taxes constituted 31 percent of county governmental revenue (\$6.3 billion)<sup>1</sup>, and 17 percent of municipal governmental revenue (\$2.5 billion), making it the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for school districts. In FY 2003-04, school districts levied \$8.4 billion in property taxes for K-12 education.<sup>2</sup>

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.<sup>3</sup> However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.<sup>4</sup> In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions,<sup>7</sup> including the homestead exemptions.

<sup>1</sup> Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at <http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls>.

<sup>2</sup> See 2005 Florida Tax Handbook, p. 135.

<sup>3</sup> See Art. VII, s. 1, Fla. Const.

<sup>4</sup> See Art. VII, s. 9, Fla. Const. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of taxable value.

<sup>5</sup> Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

<sup>6</sup> Article VII, s. 4(c) of the Florida Constitution, authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the “Granny Flats” assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devices (s. 193.621, F.S.) and building renovations for the physically handicapped (s. 193.623, F.S.).

<sup>7</sup> Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;

**Homestead Exemption** - The provision which is commonly referred to as the Homestead Exemption, is contained in Article VII, s. 6(a-d) of the Florida Constitution. It provides a \$25,000 homestead exemption for all owners of homestead property provided that the tax roll in their county has been approved. The \$25,000 amount was established in 1982 and has not been changed since then. If the amount of the homestead exemption had been increased by the percentage change in the Consumer Price Index since 1982, the current value of the Homestead Exemption would be \$50,596.

In addition, Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed \$20,000, adjusted for inflation. This is typically referred to as the Increased Homestead Exemption for Low Income Seniors.

Finally, Article VII, s. 6(e) of the Florida Constitution authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. However, this provision has been minimally implemented.<sup>8</sup>

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.<sup>9</sup> The courts have further ruled that this immunity extends to property of school districts<sup>10</sup> and certain special districts.<sup>11</sup>

In tax year 2006, the combination of these various forms of property tax relief is estimated to effectively reduce the taxable value of real property in this state by 31.9 percent.<sup>12</sup> For the 2006 tax year, it is estimated that at an aggregate average millage rate of 19.54, the tax revenue loss due to these forms of property tax relief will be \$1.1 billion for agricultural and other valuation differentials, \$6.7 billion for the "Save Our Homes" assessment limitation, and \$2.2 billion for the \$25,000 homestead exemption.<sup>13</sup>

Any additional reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.<sup>14</sup>

### **Proposed Change**

- 
- Portions of property use predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
  - Household goods and personal effects, not less than one thousand dollars;
  - Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
  - Property used for community and economic development, by local option and as defined by general law;
  - Certain renewable energy source devices and real property on which the device is installed and operated; and
  - Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>8</sup> This \$25,000 exemption is implemented in ss. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities.

<sup>9</sup> See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm'n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>10</sup> See *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>11</sup> See *Sarasota-Manatee Airport Auth. v. Mikos*, 605 So. 2d 132 (Fla. 2d DCA 1992). Cf. *Canaveral Port Auth. V. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

<sup>12</sup> 2006 estimates are \$ 2,148.5 billion in just value, and \$ 1,463.4 billion in taxable value. Revenue Estimating Conference, Ad Valorem Estimating Conference, March 6, 2006. See EDR website at <http://edr.state.fl.us/conferences/advalorem/adval0306.pdf>

<sup>13</sup> See 2005 Florida Tax Handbook, p. 137-8.

<sup>14</sup> Generally, local governments respond to reductions in the property tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

**Homestead Exemption** - This proposal would raise the current homestead exemption from \$25,000 to \$50,000. Assuming the amendment was approved by the electorate in November, the increase in the homestead exemption would first take effect for the 2008 tax roll.

C. SECTION DIRECTORY:

Not Applicable

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

**Non-Recurring**

**FY 2006-07**

Department of State, Division of Elections  
Publications Costs<sup>15</sup>

\$50,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that if the electorate was to approve this constitutional amendment the amount of property value subject to tax would be reduced by \$108.8 billion in 2008. Assuming millage rates remain unchanged, this represents a loss of \$2.1 billion in taxes.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will result in a shift of tax burden from certain homestead property owners to all other taxpayers.

D. FISCAL COMMENTS:

Article XI, s. 5(d) of the State Constitution requires the state to publish the proposed amendment along with notice of the date of the election at which it will be submitted before electors in one newspaper in each county in which a newspaper is published once in the tenth week and once in the sixth week immediately preceding the week the election is held. The Division of Elections estimates this cost to be approximately \$50,000 to meet the requirements of this provision.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

<sup>15</sup> See Art. XI, Sec. 5(d), Fla. Const.  
STORAGE NAME: h0353.FT.doc  
DATE: 1/10/2006

The mandates provision is not applicable to Joint Resolutions.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

HJR 353

2006

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to increase the homestead exemption from \$25,000 to \$50,000 for all levies.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 6 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.--

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entirety, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

29 (b) Not more than one exemption shall be allowed any  
30 individual or family unit or with respect to any residential  
31 unit. No exemption shall exceed the value of the real estate  
32 assessable to the owner or, in case of ownership through stock  
33 or membership in a corporation, the value of the proportion  
34 which the interest in the corporation bears to the assessed  
35 value of the property.

36 (c) By general law and subject to conditions specified  
37 therein, the exemption shall be increased to a total of fifty  
38 ~~twenty-five~~ thousand dollars of the assessed value of the real  
39 estate for each school district levy. By general law and subject  
40 to conditions specified therein, the exemption for all other  
41 levies may be increased up to an amount not exceeding ten  
42 thousand dollars of the assessed value of the real estate if the  
43 owner has attained age sixty-five or is totally and permanently  
44 disabled and if the owner is not entitled to the exemption  
45 provided in subsection (d).

46 (d) By general law and subject to conditions specified  
47 therein, the exemption shall be increased to a total of fifty  
48 thousand dollars ~~the following amounts of the~~ assessed value of  
49 ~~the~~ real estate for each levy other than those of school  
50 districts: ~~fifteen thousand dollars with respect to 1980~~  
51 ~~assessments; twenty thousand dollars with respect to 1981~~  
52 ~~assessments; twenty-five thousand dollars with respect to~~  
53 ~~assessments for 1982 and each year thereafter.~~ However, such  
54 increase shall not apply with respect to any assessment roll  
55 until such roll is first determined to be in compliance with the  
56 provisions of section 4 by a state agency designated by general

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law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

(e) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

INCREASED HOMESTEAD EXEMPTION.--Proposing an amendment to



F L O R I D A   H O U S E   O F   R E P R E S E N T A T I V E S

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85 | the State Constitution to increase the homestead exemption from  
86 | \$25,000 to \$50,000 for all levies, school districts or  
87 | otherwise.

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance and Tax

Representative(s) offered the following:

**Amendment (with ballot statement and title amendments)**

Remove line(s) 9-79 and insert:

That the following amendments to Sections 4 and 6 of Article VII  
and the creation of Section 26 of Article XII of the State  
Constitution is agreed to and shall be submitted to the electors  
of this state for approval or rejection at the next general  
election or at an earlier special election specifically  
authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law  
regulations shall be prescribed which shall secure a just  
valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge  
to Florida's aquifers, or land used exclusively for  
noncommercial recreational purposes may be classified by general  
law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property  
held for sale as stock in trade and livestock may be valued for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 taxation at a specified percentage of its value, may be  
24 classified for tax purposes, or may be exempted from taxation.

25 (c) All persons entitled to a homestead exemption under  
26 Section 6 of this Article shall have their homestead assessed at  
27 just value as of January 1 of the year following the effective  
28 date of this amendment. This assessment shall change only as  
29 provided herein.

30 (1) Assessments subject to this provision shall be changed  
31 annually on January 1st of each year; but those changes in  
32 assessments shall not exceed the lower of the following:

33 a. Three percent (3%) of the assessment for the prior  
34 year.

35 b. The percent change in the Consumer Price Index for all  
36 urban consumers, U.S. City Average, all items 1967=100, or  
37 successor reports for the preceding calendar year as initially  
38 reported by the United States Department of Labor, Bureau of  
39 Labor Statistics.

40 (2) No assessment shall exceed just value.

41 (3) The difference between just value and assessed value  
42 shall not exceed \$100,000 unless the provisions of paragraph  
43 (10) apply.

44 (4) (3) After any change of ownership, as provided by  
45 general law, homestead property shall be assessed at just value  
46 as of January 1 of the following year, unless the provisions of  
47 paragraph (9) apply. Thereafter, the homestead shall be assessed  
48 as provided herein.

49 (5) (4) New homestead property shall be assessed at just  
50 value as of January 1st of the year following the establishment  
51 of the homestead, unless the provisions of paragraph (9) apply.  
52 That assessment shall only change as provided herein.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

53 (6)~~(5)~~ Changes, additions, reductions, or improvements to  
54 homestead property shall be assessed as provided for by general  
55 law; provided, however, after the adjustment for any change,  
56 addition, reduction, or improvement, the property shall be  
57 assessed as provided herein.

58 (7)~~(6)~~ In the event of a termination of homestead status,  
59 the property shall be assessed as provided by general law.

60 (8)~~(7)~~ The provisions of this amendment are severable. If  
61 any of the provisions of this amendment shall be held  
62 unconstitutional by any court of competent jurisdiction, the  
63 decision of such court shall not affect or impair any remaining  
64 provisions of this amendment.

65 (9) When a person sells or transfers his or her homestead  
66 within this state and within one year establishes within the  
67 same county another property as his or her new homestead, the  
68 newly established homestead property shall be initially assessed  
69 at less than just value, as provided by general law. The  
70 difference between the new homestead property's just value and  
71 its assessed value in the first year the homestead is  
72 established shall equal the difference between the prior  
73 homestead property's just value and its assessed value in the  
74 year of sale or transfer, provided the difference does not  
75 exceed \$100,000. However, in no case shall this adjustment  
76 result in the new homestead property having an assessed value  
77 less than the assessed value of the previous homestead property.  
78 Thereafter, the homestead property shall be assessed as provided  
79 herein.

80 (10) For a homestead established before January 1, 2007,  
81 the difference between just value and assessed value may not  
82 exceed the difference between just value and assessed value that  
83 exists on January 1, 2007, plus \$100,000.

## Amendment No. (for drafter's use only)

84 (d) The legislature may, by general law, for assessment  
85 purposes and subject to the provisions of this subsection, allow  
86 counties and municipalities to authorize by ordinance that  
87 historic property may be assessed solely on the basis of  
88 character or use. Such character or use assessment shall apply  
89 only to the jurisdiction adopting the ordinance. The  
90 requirements for eligible properties must be specified by  
91 general law.

92 (e) A county may, in the manner prescribed by general law,  
93 provide for a reduction in the assessed value of homestead  
94 property to the extent of any increase in the assessed value of  
95 that property which results from the construction or  
96 reconstruction of the property for the purpose of providing  
97 living quarters for one or more natural or adoptive grandparents  
98 or parents of the owner of the property or of the owner's spouse  
99 if at least one of the grandparents or parents for whom the  
100 living quarters are provided is 62 years of age or older. Such a  
101 reduction may not exceed the lesser of the following:

102 (1) The increase in assessed value resulting from  
103 construction or reconstruction of the property.

104 (2) Twenty percent of the total assessed value of the  
105 property as improved.

## 106 SECTION 6. Homestead exemptions.--

107 (a) Every person who has the legal or equitable title to  
108 real estate and maintains thereon the permanent residence of the  
109 owner, or another legally or naturally dependent upon the owner,  
110 shall be exempt from taxation thereon, except assessments for  
111 special benefits, up to the assessed valuation of five thousand  
112 dollars, upon establishment of right thereto in the manner  
113 prescribed by law. The real estate may be held by legal or  
114 equitable title, by the entireties, jointly, in common, as a

## Amendment No. (for drafter's use only)

condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) 1. By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts ~~twenty-five thousand dollars~~ of the assessed value of the real estate for each school district levy: thirty thousand dollars with respect to 2007 assessments; thirty-five thousand dollars with respect to 2008 assessments; forty thousand dollars with respect to 2009 assessments; forty-five thousand dollars with respect to 2010 assessments; and fifty thousand dollars with respect to 2011 assessments. In 2012 and each year thereafter, the exemption shall increase annually by the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

2. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

145 five or is totally and permanently disabled and if the owner is  
146 not entitled to the exemption provided in subsection (d).

147 (d) By general law and subject to conditions specified  
148 therein, the exemption shall be increased to a total of the  
149 following amounts of assessed value of real estate for each levy  
150 other than those of school districts: thirty fifteen thousand  
151 dollars with respect to 2007 1980 assessments; thirty-five  
152 ~~twenty~~ thousand dollars with respect to 2008 1981 assessments;  
153 forty twenty-five thousand dollars with respect to 2009  
154 assessments; forty-five thousand dollars with respect to 2010  
155 assessments; and fifty thousand dollars for 2011 assessments. In  
156 2012 for 1982 and each year thereafter, the exemption shall  
157 increase annually by the percentage change in the Consumer Price  
158 Index for all urban consumers, U.S. City Average, all items  
159 1967=100, or successor reports for the preceding calendar year  
160 as initially reported by the United States Department of Labor,  
161 Bureau of Labor Statistics. However, such increase shall not  
162 apply with respect to any assessment roll until such roll is  
163 first determined to be in compliance with the provisions of  
164 section 4 by a state agency designated by general law. This  
165 subsection shall stand repealed on the effective date of any  
166 amendment to section 4 which provides for the assessment of  
167 homestead property at a specified percentage of its just value.

168 (e) By general law and subject to conditions specified  
169 therein, the Legislature may provide to renters, who are  
170 permanent residents, ad valorem tax relief on all ad valorem tax  
171 levies. Such ad valorem tax relief shall be in the form and  
172 amount established by general law.

173 (f) The legislature may, by general law, allow counties or  
174 municipalities, for the purpose of their respective tax levies  
175 and subject to the provisions of general law, to grant an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

176 additional homestead tax exemption not exceeding twenty-five  
177 thousand dollars to any person who has the legal or equitable  
178 title to real estate and maintains thereon the permanent  
179 residence of the owner and who has attained age sixty-five and  
180 whose household income, as defined by general law, does not  
181 exceed twenty thousand dollars. The general law must allow  
182 counties and municipalities to grant this additional exemption,  
183 within the limits prescribed in this subsection, by ordinance  
184 adopted in the manner prescribed by general law, and must  
185 provide for the periodic adjustment of the income limitation  
186 prescribed in this subsection for changes in the cost of living.

187 ARTICLE XII

188 SCHEDULE

189 SECTION 26. Homestead property assessment limitations;  
190 increased homestead exemption.--The amendments to Sections 4 and  
191 6 of Article VII, modifying the limitations on the assessment of  
192 homestead property and increasing the amount of the homestead  
193 exemption, shall take effect January 1, 2007.

194  
195  
196 ===== B A L L O T S T A T E M E N T A M E N D M E N T =====

197 Remove line(s) 82-87 and insert:

198  
199 CONSTITUTIONAL AMENDMENT

200 ARTICLE VII, SECTIONS 4 AND 6

201 ARTICLE XII, SECTION 26

202  
203 ASSESSMENT OF HOMESTEAD PROPERTY. Proposing amendments to the  
204 State Constitution to provide for a phased increase in the  
205 exemption for homestead property from \$25,000 to \$50,000 over 5  
206 years; to provide that homeowners who move from one homestead



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property to another in the same county would have the new  
homestead property assessed at up to \$100,000 less than just  
value depending on the differential between the just value and  
the assessed value of their previous homestead property; to  
limit the difference between the just value and the assessed  
value of homestead property to \$100,000 except property  
established as homestead property before January 1, 2007, for  
which the difference between just value and assessed value may  
not exceed the difference between just value and assessed value  
existing on January 1, 2007, plus \$100,000; and schedule the  
amendments to take effect January 1, 2007, if adopted.

===== T I T L E   A M E N D M E N T =====

Remove line(s) 1-5 and insert:

A joint resolution proposing amendments to Sections 4 and 6 of  
Article VII and the creation of Section 26 of Article XII of the  
State Constitution to limit the difference between the just  
value and the assessed value for homestead property, provide for  
assessing newly established homestead property at less than just  
value subject to a limitation, and increase the amount of the  
homestead exemption from \$25,000 to \$50,000.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

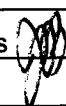
**BILL #:** HB 667 CS

Credit Counseling Services

**SPONSOR(S):** Hasner

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
3) <u>Finance &amp; Tax Committee</u>		<u>Levin</u> <i>John Levin</i>	<u>Diez-Arguelles</u> 
4) <u>Commerce Council</u>			
5) _____			

### SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people in managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

This bill creates a definition for "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency towards amounts payable to the creditor by the debtor. Creditor contributions may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

The bill removes a cap limiting fees that may be charged to out-of-state customers.

The bill allows a debt management or credit counseling service to charge a reasonable and separate fee for insufficient funds transactions.

This bill expands the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Finally, the bill authorizes a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor on behalf of the debtor.

The bill does not have an effect on state revenues or expenditures. (Please see "Fiscal Analysis and Economic Impact Statement.")

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through "Debt Management Plans" (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, and provide a manageable plan for clients.

A relatively new law became effective in 2004 directly regulating credit counseling organizations.<sup>1</sup> However, it provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Florida Housing Finance Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.<sup>2</sup>

The credit counseling industry is subsidized by various creditors (e.g. Visa, Mastercard, etc.) through contributions made to various counseling agencies. Typically, an organization engaged in debt management services withholds amounts due to the creditor by the debtor, which the creditor treats as a contribution to an exempt organization.

##### Proposed Changes

This bill defines "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of the debtors. However, the bill specifies that a "creditor contribution" may not reduce the amounts a debtor pays towards his or her debt. This definition ensures

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<sup>1</sup> s. 1, ch. 2004-351., created as Part IV of Chapter ss. 817, F.S., ss.817.801-817.806, F.S.

<sup>2</sup> s. 817.803, F.S.

that consumers receive credit for 100% of the dollars that they pay for consolidation, regardless of any contributions by the credit card companies.

The bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out of Florida. This language will not prohibit a person engaged in debt management services from charging higher fees or costs to debtors located in other states than they do to Florida residents.

Furthermore, the bill clarifies that the law does not prohibit a debt management service or credit counseling service from charging a reasonable and separate fee for insufficient funds transactions.

Section 817.804, F.S., currently requires any person engaged in debt management or credit counseling services to obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors. The bill amends the provision to specifically "include" all the above-mentioned accounts, which implies that the audit may not have covered all accounts previously.

Finally, the bill requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor; and it clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

#### C. SECTION DIRECTORY:

Section 1 amends s. 817.801, F.S., and creates the definition of "creditor contribution".

Section 2 amends s. 817.802, F.S., and removes a cap limiting fees that may be charged to out-of-state customers and clarifies that a debt management service or credit counseling service may charge a reasonable and separate fee for insufficient funds transactions.

Section 3 amends s. 817.804, F.S., and expands the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Section 4 amends s. 817.805, F.S., and requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor and clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

Section 5 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown.

**D. FISCAL COMMENTS:**

This bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out-of-state.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other: None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 21, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment removes "negotiation and settlement" from the definition of debt management services, to conform to the companion SB 1954.

This analysis has been updated to reflect the committee substitute adopted by the Economic Development, Trade and Banking Committee at its February 21, 2006 meeting.

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CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends  
the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to credit counseling services; amending s.  
817.801, F.S.; revising and providing definitions;  
amending s. 817.802, F.S., relating to unlawful fees and  
costs; limiting application to certain debtors; amending  
s. 817.804, F.S.; revising annual audit requirements;  
amending s. 817.805, F.S.; including creditor  
contributions within an authorized deduction from  
requirements for disbursement of funds; providing an  
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 817.801, Florida Statutes, is amended  
to read:

817.801 Definitions.--As used in this part:

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~~(1)(4)~~ "Credit counseling agency" means any organization providing debt management services or credit counseling services.

~~(2)(1)~~ "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

(3) "Creditor contribution" means any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of debtors. However, a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

~~(4)(2)~~ "Debt management services" means services provided to a debtor by a credit counseling organization for a fee to:

(a) Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value.

~~(5)(3)~~ "Person" means any individual, corporation, partnership, trust, association, or other legal entity.

Section 2. Section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.--

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than \$50 for the



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initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than \$120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(4)(2)(b) are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or \$35 per month.

(2) ~~No provision of~~ This section does not prohibit ~~prohibits~~ any person, while engaging in debt management or credit counseling services, from imposing upon and receiving from a debtor a reasonable and separate charge or fee for insufficient funds transactions.

Section 3. Paragraph (a) of subsection (1) of section 817.804, Florida Statutes, is amended to read:

817.804 Requirements; disclosure and financial reporting.--

(1) Any person engaged in debt management services or credit counseling services shall:

(a) Obtain from a certified public accountant licensed under s. 473.308 an annual audit that shall include ~~of~~ all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors.

Section 4. Section 817.805, Florida Statutes, is amended to read:

817.805 Disbursement of funds.--Any person engaged in debt management or credit counseling services shall disburse to the appropriate creditors all funds received from a debtor, less any

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78 | fees permitted by s. 817.802 and any creditor contributions,  
79 | within 30 days after receipt of such funds. Further, any person  
80 | engaged in such services shall maintain a separate trust account  
81 | for the receipt of any funds from debtors ~~each debtor~~ and the  
82 | disbursement of such funds on behalf of such debtors ~~debtor~~.

83 |       Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 667

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Finance and Tax

Representative Stargel offered the following:

**Amendment**

Remove lines 68 - 72 and insert:

(a) Obtain from a licensed certified public accountant  
~~licensed under s. 473.308~~ an annual audit in accordance  
with generally accepted auditing standards that shall  
include ~~of~~ all accounts of such person in which the funds  
of debtors are deposited and from which payments are made  
to creditors on behalf of debtors.


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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 709                      Court Costs for Drug Court Programs  
**SPONSOR(S):** Quinones and others  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** CS/SB 940

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	12 Y, 0 N	Poblete	Hogge
2) Finance & Tax Committee		Rice <b>ACR</b>	Diez-Arguelles 
3) Judiciary Appropriations Committee			
4) Justice Council			
5) _____			

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### SUMMARY ANALYSIS

This bill authorizes counties, in which a drug court program has been established, to adopt an ordinance requiring circuit and county courts to impose a \$6 court fee against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, certain specified offenses involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. The revenues generated from this fee are to fund the programs operational and administrative costs.

The funds generated by this ordinance will be administered by the trial court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

Provided that the local government adopts an ordinance under the provisions of this bill, there will be a positive insignificant impact to local government revenues.

The bill takes effect upon becoming a law.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

**Provide Limited Government:** This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

**Ensures Lower Taxes:** This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Background**

##### Drug Courts

Dade County created the first drug court in Florida in 1989 as a response to a federal mandate to reduce the inmate population or lose federal funding. The focus of the Dade County Drug Court was to provide treatment for offenders and to reduce recidivism. Rather than simply sentencing offenders for short periods of incarceration or probation, the court supervised offenders by holding random drug tests, requiring frequent court appearances, imposing sanctions for continued drug use, and providing incentives to maintain sobriety.

Drug courts operate in each of Florida's 20 judicial circuits. As of February 2006, there were a total of 46 adult, 30 juvenile, 19 family dependency, and 2 other types of drug courts operating in 46 counties within the state.<sup>1</sup>

Drug court programs typically provide services and monitoring in the pretrial stage. The programs extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance. Drug courts operate on a reward and punishment system. Offenders successfully completing a drug court program receive a reduced charge or possibly even dismissal of the charge. For those that fail to comply with the program, the punishment is typically jail time, plus continuation of the criminal process and possible additional jail time upon conviction.

##### Funding

Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and requires such counties to include therapeutic jurisprudence principles, but limits the amount of state funding that can be used for these purposes. Section 397.334(5), F.S., reads:

“If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004, [F.S.]”

Section 29.004(10)(d), F.S., indicates that the state will supply funds for “service referral, coordination, monitoring, and tracking for treatment-based drug court programs,” but will not fund the “costs associated with the application of therapeutic jurisprudence principles by the courts.”

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<sup>1</sup> Report on Florida's Drug Courts, July 2004, [http://www.flcourts.org/gen\\_public/family/bin/dcreport.pdf](http://www.flcourts.org/gen_public/family/bin/dcreport.pdf), accessed March 2006.

## Court Costs

As set forth in ch. 938, F.S., there are four categories of court costs. There are mandatory court costs in all cases, mandatory court costs in specific cases, mandatory court costs authorized by local governmental entities, and discretionary court costs in specific types of cases. In each category there are certain court costs related to drug offenses.

Mandatory court costs applying in all cases:

- \$3 cost (authorized under s.938.01, F.S.) for any person convicted for violation of a state penal or criminal statute or a municipal or county ordinance;
- \$50 cost (authorized under s.938.03, F.S.) for any person pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense;<sup>2</sup>
- \$200 cost (authorized under s.938.05, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, \$50 for each misdemeanor or criminal traffic offense;
- 5% surcharge (authorized under s.938.04, F.S.) imposed on any fine for any criminal offense by law, including a criminal traffic offense; and,
- \$20 surcharge (authorized under s.938.06, F.S.) on any fine prescribed by law for any criminal offense.

Mandatory court costs in specific cases:

- \$135 fine (authorized under s.938.07, F.S.) for driving or boating under the influence; and,
- \$15 court cost (authorized under s.938.13, F.S.) for any person found guilty of any misdemeanor in which the unlawful use of drugs or alcohol is involved.

Mandatory costs authorized by local governmental entities:

- Up to \$65 (authorized under s.939.185, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor or criminal traffic offense to be used only in the county in which the offense occurred; and,
- In counties with a teen court, a \$3 cost (authorized under s.938.19, F.S.) against each person pleading guilty or nolo contendere to or who is convicted of, regardless of adjudication, a violation of a criminal law, a municipal or county ordinance, or pays a fine or civil penalty for any violation of chapter 316, F.S.

Discretionary costs:

- As authorized under ss.938.21 and 938.23, F.S., a defendant may be charged an amount up to, or an amount equal to, the authorized fine for those persons convicted for driving under the influence, disorderly intoxication, open house parties, or for a violation of any section under chapter 893, F.S., (drug abuse and prevention control), chapter 562, F.S., (beverage law enforcement), chapter 567, F.S., (liquor), or chapter 568, F.S., (intoxicating liquors in counties where prohibited);

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<sup>2</sup> Fla. Stat. 938.03

- \$100 fine (authorized under s.938.25, F.S.) against any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of s. 893.13, F.S., which makes it unlawful to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver, a controlled substance; and,
- As authorized under s.938.27, F.S., a convicted criminal defendant is required to pay the documented costs of prosecution if so requested.

### **Effect of Bill**

This bill authorizes counties to adopt an ordinance requiring circuit and county courts to impose a \$6 fee against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, a violation of ch. 893, F.S., (substance abuse and controlled substances); or a municipal ordinance, a county ordinance, or any provision of ch. 316, F.S., (state uniform traffic control laws) involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. This mandatory cost would be in addition to any fine, civil penalty or other applicable court cost.

The funds generated by this mandatory cost would be administered by the court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

#### **C. SECTION DIRECTORY:**

Section 1. Creates s. 938.20, F.S., relating to court costs for drug court programs, authorizing county and circuit courts to impose a fee.

Section 2. Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

Positive recurring impact, but of an indeterminate amount, since the number of persons subject to this cost is unknown.

##### **2. Expenditures:**

None

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Should a county adopt an ordinance under the provisions of this bill, applicable persons would pay an additional \$6 in court fees.



**D. FISCAL COMMENTS:**

The total amount of revenue for drug courts generated by imposition of this fee depends on the number of persons subject to it. No money is generated unless the county adopts the applicable ordinance. Of each \$6 mandatory cost, the drug court program would receive \$5.52 and the Clerk of the Court \$0.48.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

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A bill to be entitled

An act relating to court costs for drug court programs; creating s. 938.20, F.S.; authorizing counties to provide by ordinance for funding of drug court programs through the assessment of an additional mandatory court cost; providing for the assessment to be imposed against persons convicted of certain violations of drug abuse prevention and control provisions, violations of a municipal or county ordinance, or traffic violations involving alcohol or other substance use or abuse and resulting in payment of a fine or penalty; providing an exception; providing for collection and deposit of the assessment; providing for administration of the funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 938.20, Florida Statutes, is created to read:

938.20 Court costs for drug court programs.--

(1) Notwithstanding s. 318.121, each county in which a drug court program has been established under s. 397.334 may require by ordinance the assessment of a mandatory cost in the sum of \$6 which shall be assessed by both the circuit court and the county court in the county against every person who pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of chapter 893, a municipal ordinance, a county ordinance, or any provision of chapter 316 involving

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29 the use of alcohol or other substance use or abuse which results  
 30 in payment of a fine or civil penalty. Any person whose  
 31 adjudication is withheld pursuant to s. 318.14(9) or (10) must  
 32 be assessed such cost. The \$6 assessment shall be in addition to  
 33 any fine, civil penalty, or other court cost and may not be  
 34 deducted from the proceeds of that portion of any fine or civil  
 35 penalty which is received by a municipality in the county or by  
 36 the county in accordance with ss. 316.660 and 318.21. The \$6  
 37 assessment shall specifically be added to any civil penalty paid  
 38 for a violation of chapter 316, whether such penalty is paid by  
 39 mail, paid in person without request for a hearing, or paid  
 40 after a hearing and determination by the court. However, the \$6  
 41 assessment may not be made against a person for a violation of  
 42 any state statute, county ordinance, or municipal ordinance  
 43 relating to the parking of vehicles, with the exception of a  
 44 violation of the handicapped parking laws.

45       (2) The clerk of the circuit court shall collect the \$6  
 46 assessment established pursuant to subsection (1) and shall  
 47 deposit the assessment monthly into an account specifically  
 48 designated for the operation and administration of the drug  
 49 court program within the county and which is under the authority  
 50 of the trial court administrator for the respective circuit,  
 51 less 8 percent, which shall be retained as fee income for the  
 52 office of the clerk of the circuit court, together with other  
 53 moneys that become available for establishing, operating, and  
 54 administering drug court programs under state law.

55       (3) Assessments deposited into an account specifically  
 56 designated for the operation and administration of the drug

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57 court programs within such county shall be administered by the  
 58 trial court administrator for the respective circuit under the  
 59 direction of the advisory committee appointed by the chief judge  
 60 in each circuit pursuant to ss. 948.08(7) and 985.306(2).

61       Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 709

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill:

Representative(s) Quinones offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 21-44 and insert:

(1) Each county in which a drug court program has been established under s. 397.334 may require by ordinance the assessment of a mandatory cost in the sum of \$6 which shall be assessed by both the circuit court and the county court in the county against every person who

(a) Pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of chapter 893,

(b) Pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of a municipal ordinance or a county ordinance, involving the use of alcohol or other substance use or abuse or

(c) Pays a fine or civil penalty for any violation of chapter 316 involving the use of alcohol or other substance use or abuse.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

21 The \$6 assessment shall be in addition to any fine, civil  
22 penalty, or other court cost and may not be deducted from the  
23 proceeds of that portion of any fine or civil penalty which is  
24 received by a municipality in the county or by the county in  
25 accordance with ss. 316.660 and 318.21. The \$6 assessment shall  
26 specifically be added to any civil penalty paid for a violation  
27 of chapter 316, whether such penalty is paid by mail, paid in  
28 person without request for a hearing, or paid after a hearing  
29 and determination by the court.

30  
31 ===== T I T L E   A M E N D M E N T =====

32       Remove line(s) 7-11 and insert:

33 who plead guilty or no contest to, or are convicted of, certain  
34 drug-abuse prevention and control provisions or certain local  
35 ordinances or uniform traffic control laws involving alcohol or  
36 other substance use or abuse; providing

37  
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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS


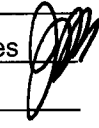
**BILL #:** HB 789 CS

Damage Prevention and Safety of Underground Facilities

**SPONSOR(S):** Murzin

**TIED BILLS:** None

**IDEN./SIM. BILLS:** CS/SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities &amp; Telecommunications Committee</u>	13 Y, 0 N, w/CS	Holt	Holt
2) <u>Civil Justice Committee</u>	7 Y, 0 N, w/CS	Blalock	Bond
3) <u>Finance &amp; Tax Committee</u>		Noriega 	Diez-Arguelles 
4) <u>Commerce Council</u>			
5) _____			

### SUMMARY ANALYSIS

The Underground Facility Damage Prevention and Safety Act provides access for excavating contractors and the public to provide notification to the free-access notification system established by the creation of the Sunshine State One-Call of Florida, Inc., (SSOCOF) of their intent to engage in excavation or demolition.

This bill amends the Underground Facility Damage Prevention and Safety Act as follows:

- Reduces the number of days that an excavator must provide certain information before beginning any excavation or demolition, from "not less than 2 or more than 5" business days to "not less than 2" business days. This bill also provides an exception to this timing requirement for excavation beneath the waters of the state. This bill increases the number of days the information provided by the excavator is valid from 20 to 30 calendar days;
- Revises notification requirements for excavators;
- Provides procedures for when a member operator receives notification from the system that excavation or demolition is planned in an area in proximity to an underground facility;
- Provides that SSOCOF does not have a duty and is not permitted to locate or mark underground facilities, and exempts SSOCOF from liability for the failure of member operators to comply with the act;
- Revises the non-criminal infraction section to:
  - Provide that court cost be added to the civil penalty;
  - Provide that when a citation is issued by a local government entity, 80% of the penalty is to be directed to that local government entity; and
  - Provide that SSOCOF may retain legal representation regarding citations issued under this Act; and
- Provides additional exemptions for certain pest control services for certain situations where mechanized equipment is not used.

This bill has an insignificant positive fiscal impact on local government revenues.

The bill has an effective date of October 1, 2006.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the regulation of procedures that member operators and excavators must follow when providing information to and receiving notification from the free-access notification system.

Promote personal responsibility -- This bill decreases personal accountability by providing that SSOCOF is not liable for failure of a member operator to comply with the requirements of the Underground Facility Damage Prevention and Safety Act.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Chapter 93-240, L.O.F., created the "Underground Facility Damage Prevention and Safety Act" (Act), and is codified at ch. 556, F.S. The purpose of this Act is to:

- Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations;
- Create a not-for-profit corporation comprised of operators of underground facilities in Florida to administer the provisions of this Act;
- Fund the cost of administration through contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities;
- Reserve to the state the power to regulate any subject matter specifically addressed in this Act; and
- Permit any local law enforcement officer or permitting agency inspector to enforce this Act without the need to incorporate the provisions of this Act into any local code or ordinance.

This Act established the statewide free-access notification system, which is a single toll-free number provided for persons to give notification of and intent to engage in excavation or demolition. The Act also created a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), established pursuant to s. 556.101(3)(c), F.S., and is comprised of Florida underground facilities operators (member operators), which administer the chapter provisions and maintain the free-access notification system (system). The cost of the system is funded "entirely and exclusively" by assessed contributions from the member operators. The Act requires operators of underground facilities in the state of Florida to be a member of SSOCOF and must use and participate in the system. Excavators planning to excavate or demolish are required to provide notice and information to the system so that they do not damage or destroy any underground facilities during the excavation or demolition. Once notice is given, member operators must follow certain procedures if the area being excavated or demolished is in conflict with an area where a member operator has an underground facility.

##### Effect of the Bill

##### Legislative Intent and Purpose of the Act

The bill amends s. 556.101(2), F.S., which addresses the legislative intent and purpose of the Act, to clarify that the SSOCOF is only the system administrator and is not required or permitted to locate or mark any underground facilities.

This bill also amends s. 556.101(3), F.S., pertaining to the purpose of the Act, by deleting the phrase "permitting agency inspector" in paragraph (e) of s. 556.101(3), F.S., and provides that at the local level any law enforcement officer, government code inspector, or code enforcement officer is permitted to enforce the provisions of the Act without the need to incorporate these changes into any local code or ordinance. The bill also provides that the purpose of the Act is to foster awareness of federal laws and regulations that promote safety with respect to underground facilities by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

#### Small Municipality Exception

Section 556.102(8), F.S., provides that a member operator is any person who furnishes or transports materials or services by means of an underground facility, except a small municipality that has elected not to participate in the one call notification system.<sup>1</sup>

Section 556.103(1), F.S., provides that each operator of an underground facility in Florida must be a member of SSOCOF, and must use and participate in the free-access notification system. There is an exception to this requirement for small cities, which may elect by January 1, 1998, not to participate in the system until January 1, 2003.

Section 556.104, F.S., provides that the free-access notification system is maintained by SSOCOF. Any person who furnishes or transports materials or services by means of an underground facility in this state must participate as a member operator of the system, except that a small city may elect not to participate in the system.

The exception for small cities provided in ch. 556, F.S., expired January 1, 2003. This bill amends ss. 556.102(8), 556.103(1), and 556.104, F.S., to remove the exception for small municipalities from ch. 556, F.S.

#### Requirement that Developer Provide Information through the Free-Access Notification System

Section 556.105(1), F.S., provides that an excavator must provide certain information through the Free-Access Notification System (system) not less than 2 or more than 5 full business days before beginning any excavation or demolition. The excavator must provide the information by providing notification through the system. Under current law, the information provided by the excavator is valid for 20 calendar days after each date the information is provided to the system.

This bill amends s. 556.105(1), F.S., which addresses procedures relevant to notification, in the following ways:

- An excavator must provide the required information through the system not less than 2 full business days before beginning excavation or demolition;
- The excavator, along with the other information required by statute, must provide a valid electronic address, if available, to facilitate a positive response by the system;
- Provides an exception to this provision for excavation beneath the waters of the state; and
- Provides that the information provided by an excavator is valid for 30 calendar days after the date such information is provided to the system.

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<sup>1</sup> S. 120.52(16), F.S., defines "small city" as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

## Procedures of the System for When an Excavator Provides Notice

Section 556.105(3), F.S., provides that the system must provide persons who provided notification through the system with the names of the member operators who will be advised of the notification and a notification number that specifies the date and time of the notification.

This bill creates s. 556.105(4), F.S., to provide that the notification number provided to the excavator must be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

This bill also provides that an excavator "may" instead of "shall" not demolish in an area described in the notice provided by an excavator, until all member operator underground facilities have been marked and located, or removed. This provision appears to give the excavator discretion to demolish or not demolish in areas not marked at the noticed site.

This bill also amends s. 556.105, F.S., by renumbering and correcting cross-references in ss. 556.105(4) through 556.105(11), F.S.

## Required Procedures for Member Operators

This bill creates s. 556.105(9), F.S., to provide that after receiving notification from the system, a member operator must provide a positive response to the system within 2 full business days, or 10 full business days for an underwater excavation, indicating the status of operations to protect the facility.

This bill deletes s. 556.105(8), F.S., providing that a member operator which determines that the excavation or demolition is not near an existing underground facility of the member operator, notify the excavator within 2 full business days after the time of the notification to the system that the excavation or demolition area is clear. This bill also removes obsolete language in s. 556.105(8)(b), F.S., related to a positive response system being implemented by January 1, 2004.

## Positive-Response Communication between Operators and Excavators

This bill creates s. 556.105(9)(b), F.S., to provide that the system must establish and maintain a process to facilitate a positive-response communication between member operators and excavators. This bill provides that the system is exempt from this requirement when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

This bill also creates s. 556.105(9)(c), F.S., to provide that an excavator must verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system.

## Uniform Color Code for Utilities

This bill amends s. 556.105(10), F.S., to provide that a member operator must use the "Uniform Color Code for Utilities" of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

## Liability of the Member Operator, Excavator, and System

Section 556.106, F.S., provides for the liability of the member operator, excavator, and system. Section 556.106(2), F.S., provides that if a person violates s. 556.105, F.S., and performs an excavation or demolition that damages an underground facility of a member operator, there is a rebuttable presumption that the person was negligent. If found liable, the person is liable for the total sum of the losses to all member operators involved. Any damages for loss of revenue and loss of use "shall" not exceed \$500,000 per affected underground facility, except that revenues lost by a

governmental member operator whose revenues are used to support payments on principal and interest on bonds "shall" not be limited. If the excavator is found liable for breach of duty, any damage for loss of revenue and loss of use "shall" not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on bonds "shall" not be limited. Section 556.106(7), F.S., also provides that an excavator who performs any excavation with hand tools under s. 556.108(5), F.S.,<sup>2</sup> is liable for any damage to any operator's underground facilities damaged during such excavation.

The bill deletes the term "shall" throughout both s. 556.106(2), F.S., and replaces it with "may." The bill also deletes paragraph (e) of s. 556.106(2), F.S., to remove obsolete language related to non-member small cities. The bill adds subsection (6) to provide that SSOCOF does not have a duty to mark or locate underground facilities, and a right of recovery does not exist against the SSOCOF for failing to do so. This bill clarifies that SSOCOF is not liable for the failure of a member operator to comply with the requirements of this chapter. This bill also amends s. 556.106(7), F.S., to provide that an excavator using hand tools under 556.108(4)(c), F.S.,<sup>3</sup> or s. 556.108(5), F.S., is liable for any damage to any operator's underground facilities damaged during such excavation.

### Non-criminal Violations of the Act

Section 556.107, F.S., pertains to violations of the Act.

The bill amends s. 556.107, F.S., to correct cross references. It further deletes the term "permitting agency inspector" and replaces it with "government code inspector" and "code enforcement officer." These two new terms, along with the current language "local or state law enforcement officer," specify the enforcement for this chapter.

### Civil Penalties

Section 556.107(1)(b), F.S., provides that citations may be issued to any employee of the excavator or member operator who is directly involved in the noncriminal infraction. Section 556.107(1)(c), F.S., provides that any excavator or member operator who commits a noncriminal infraction provided under this section may be required to appear before the county court. The civil penalty for any such infraction is \$250, except as otherwise provided in this section.

This bill amends s. 556.107(1)(b), F.S., to provide that citations "shall" be "hand-delivered" to any employee of the excavator or member operator who is involved in the noncriminal infraction. This bill also provides that the citation shall be issued in the name of the excavator or member operator, whichever is applicable. This bill also amends s. 556.107(1)(c), F.S., to add court costs to the civil penalty. The bill also provides that if a local law enforcement officer, local government code inspector, or code enforcement officer issues the citation, an 80/20 split of the collected penalty occurs. This bill takes 80 percent of the \$250 fine that would go into the fine and forfeiture fund, and authorizes the clerk to distribute it to the local government entity whose employee issued the citation. The remaining 20 percent is retained by the clerk of court for administrative costs, in addition to other court costs, and shall be distributed into the fine and forfeiture fund as required by s. 142.01, F.S.<sup>4</sup> In addition, if a state law enforcement officer issues the citation, the amount collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund.

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<sup>2</sup> Section 556.108(5), F.S., provides an exemption to the notification requirements pursuant to the Act, however an excavator is still liable for damage caused.

<sup>3</sup> Section 556.108(4)(c), F.S., is created by this bill and is an exemption for any excavation of 18 inches or less for locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

<sup>4</sup> 142.01 Fine and forfeiture fund; clerk of the circuit court.—There shall be established by the clerk of the circuit court in each county of this state a separate fund to be known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions.

The bill amends ss. 556.107(d), (e), and (f), F.S., to add court costs to the civil penalty provided under this section.

This bill amends s. 556.107(e), F.S., to provide that payment of the civil penalty and court costs are due within 30 days instead of 10 days.

The bill creates paragraph (i) in s. 556.107(1), F.S., to provide that the SSOCOF may, at its own cost, retain legal representation as assistance in county court proceedings pertaining to citations issued under this section. SSOCOF may also appear in infraction cases appealed to the circuit court, and the appellant in such appeals shall timely notify SSOCOF of appeals under this section.

### Misdemeanors

Section 556.107(2), F.S., provides that any person who knowingly and willfully removes or destroys the valid stakes or other valid physical markings used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree. For purposes of this section, the stakes and markings are valid for 20 calendar days.

This bill amends s. 556.107(2), F.S., to extend the validity of stakes and markings from 20 days to 30 days.

### Exemptions

Section 556.108, F.S., provides several exemptions to the notification requirements under the Act. Section 556.108(1), F.S., provides an exemption for any excavation or demolition performed by the owner of single-family residential property. Section 556.108(4), F.S., provides an exemption for any excavation of 18 inches or less for surveying on public or private land by surveyors or mappers and certain maintenance activities performed by a state agency.

This bill amends s. 556.108(1), F.S., to provide an exception to the exemption for owners of a single-family residential property. This bill provides that the exemption will not apply to "property that is subdivided or is to be subdivided into more than one single-family residential property." The bill amends s. 556.108(4)(a), F.S., to provide that pest control services are included in the exemption for any excavation of 18 inches or less. This bill creates s. 556.108(4)(c), F.S., to provide another exemption under that subsection for "locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility, and if mechanized equipment is not used."

## C. SECTION DIRECTORY:

Section 1. Amends s. 556.101, F.S., pertaining to legislative intent and the purpose of the Act.

Section 2. Amends s. 556.102(8), F.S., which addresses the definition of "member operator," by removing language pertaining to small municipalities.

Section 3. Amends s. 556.103(1), F.S., to remove language pertaining to small cities being able to opt out of using and participating in the free-access notification system. Removes obsolete language providing that the not-for-profit corporation be formed by June 1, 1993.

Section 4. Amends s. 556.104, F.S., to remove language pertaining to small cities being able to opt out of using and participating in the free-access notification system.

- Section 5. Amends s. 556.105, F.S., to revise procedures for an excavator who is providing information to the system before beginning any excavation or demolition, and procedures for member operators when they receive notification from the system.
- Section 6. Amends s. 556.106, F.S., relating to the liability of the member operator, excavator, and system, and removes obsolete language pertaining to non-member small cities.
- Section 7. Amends s. 556.107, F.S., relating to violations under the Act.
- Section 8. Amends s. 556.108, F.S., relating to exemptions to the notification requirements.
- Section 9. Provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill will have an insignificant positive fiscal impact on local government revenues from the addition of court costs to the fines imposed under s. 556.107, F.S. SEE FISCAL COMMENTS.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

This bill will have an indeterminate impact on local governments due to the provisions of the bill that transfer 80 percent of fine revenues from the Clerk's fine and forfeiture trust fund to the local government that employs the person issuing the citation.

The total applicable court costs for the violations addressed in this bill are \$5 per violation. Section 938.01, F.S., requires every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance to pay \$3 as a court cost. This amount is deposited into the Additional Court Cost Clearing Trust Fund.

Also, s. 938.15, F.S., states that in addition to the costs provided for in s. 938.01, F.S., municipalities and counties may assess an additional \$2 for expenditures for criminal justice education degree programs and training courses for local funding.

SSOCOF officials have indicated that their enforcement responsibilities are fulfilled by off-duty personnel in 16 Florida counties. Since January 2005, 27 citations have been issued by the SSOCOF resulting in total fines of less than \$7,000. However, SSOCOF officials also indicate that the number of citations may increase because there is money in their budget to allow for the hiring of additional off-duty personnel to enforce the provisions of chapter 556, F.S.

In addition, SSOCOF officials have stated that a number of Florida counties have hired their own full-time personnel for enforcement purposes. Notably, approximately 215 citations have been issued in Palm Beach County during the past two years, resulting in a fiscal impact of less than \$50,000.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 21, 2006, the Committee on Utilities and Telecommunications adopted two amendments. The amendments made the following revisions to the bill:

- Provided that the civil penalty collected from citations issued by a state law enforcement officer shall be retained by the clerk of court and deposited into the fine and forfeiture fund established pursuant to s. 142.01, F.S.;
- For any person charged with a noncriminal infraction under paragraph (a) of s. 556.107(1), F.S., unless required to appear before the county court, the amendment increased the timeframe for payment from 10 days to 30 days;
- Created a notification exemption for services performed by a pest control licensee under chapter 482, F.S., for excavation of 18 inches or less if mechanized equipment is not used; and
- Created a notification exemption for any excavation or related maintenance activity by a water control district created pursuant to chapter 298, F.S., or special act, provided specific criteria are met.

The bill was then reported favorably with a committee substitute.

On March 15, 2006, the Civil Justice Committee adopted six amendments to this bill. The amendments made the following revisions to the bill:

- Provided that the purpose of the Underground Facility Damage Prevention and Safety Act is to foster the awareness of federal laws and regulations that promote safety with respect to underground facilities by requiring advance notice of activities by those who engage in excavation or demolition operations;
- Provided that an excavator who performs any excavation with hand tools under s. 556.1108(4)(c), F.S., is liable for any damage to any operator's underground facilities damaged during such excavation;
- Required that citations must be hand-delivered to any employee of the excavator or member operator who is involved in the non-criminal infraction. Also, requires that the citation must be issued in the name of the excavator or member operator;
- Removed the "fees" from the civil penalty for any infraction under s. 556.107(a), F.S.;
- Provided that the exemption for excavations performed for owners of single-family residences does not apply to excavations in connection with subdivisions involving multiple single-family residences;
- Provided that the exemption to the notification requirements will not apply if the excavation is 18 inches or less and for locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility, "if the excavator performing such work for the current owner or future owner of the underground facility." Also, replaces "public utility facility" with "public underground facility"; and
- Removed the exemption for any excavation or related maintenance activity by a water control district created under ch. 298, F.S., or by special act if certain conditions are met.

The bill was then reported favorably with a committee substitute.



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CHAMBER ACTION

The Civil Justice Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to damage prevention and safety for underground facilities; amending s. 556.101, F.S.; providing legislative intent that Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities; revising purposes of the Underground Facility Damage Prevention and Safety Act; amending s. 556.102, F.S.; correcting a reference; redefining the term "member operator" to remove an exception for a small municipality that elects not to participate in the notification system; amending ss. 556.103 and 556.104, F.S.; deleting provisions exempting a small city from membership in the Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring that specified information be placed in the excavation notification system; providing an exception for underwater excavations; providing that the information is valid for 30 calendar days; requiring that a notification number assigned to an excavator be provided to a law enforcement

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24       officer, government code inspector, or code enforcement  
25       officer upon request; requiring that a member operator  
26       respond to the system within a specified time indicating  
27       the status of its facility protection operations;  
28       requiring the corporation to establish a communication  
29       system between member operators and excavators; requiring  
30       an excavator to verify the system's positive responses  
31       before beginning excavation; requiring operators to use a  
32       specified color-code manual; amending s. 556.106, F.S.;  
33       providing that the notification system has no duty to and  
34       may not mark or locate underground facilities; providing  
35       that a person has no right of recovery against the  
36       notification system for failing to mark or locate  
37       underground facilities; providing that the system is not  
38       liable for the failure of a member operator to comply with  
39       the requirements of the act; amending s. 556.107, F.S.;  
40       correcting cross-references; providing for the  
41       distribution of civil penalties; revising procedures for  
42       disposition of citations; authorizing the corporation to  
43       retain legal counsel to represent the corporation in  
44       certain legal proceedings; amending s. 556.108, F.S.;  
45       revising provisions that exempt excavation or demolition  
46       by the owner of residential property from specified  
47       notification requirements to exclude certain property that  
48       is subdivided or to be subdivided; providing that certain  
49       excavations are exempt from mandatory location  
50       notification if mechanized equipment is not used;

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exempting pest control services under certain  
circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 556.101, Florida Statutes, is amended  
to read:

556.101 Short title; legislative intent.--

(1) This chapter act may be cited as the "Underground  
Facility Damage Prevention and Safety Act."

(2) It is the intent of the Legislature to provide access  
for excavating contractors and the public to provide  
notification to the system of their intent to engage in  
excavation or demolition. This notification system shall provide  
the member operators an opportunity to identify and locate their  
underground facilities. Under this notification system, Sunshine  
State One-Call of Florida, Inc., is not required or permitted to  
locate or mark underground facilities.

(3) It is the purpose of this chapter act to:

(a) Aid the public by preventing injury to persons or  
property and the interruption of services resulting from damage  
to an underground facility caused by excavation or demolition  
operations.

(b) Create a not-for-profit corporation comprised of  
operators of underground facilities in this state to administer  
~~the provisions of this chapter act.~~

(c) Fund the cost of administration through contributions  
from the member operators for services provided to the member

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operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities.

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this chapter act.

(e) Permit any local law enforcement officer, local government code inspector, or code enforcement officer ~~or permitting agency inspector~~ to enforce this chapter act without the need to incorporate the provisions of this chapter act into any local code or ordinance.

(f) Foster the awareness of federal laws and regulations that promote safety with respect to underground facilities, including, but not limited to, the Federal Pipeline Safety Act of 1968, as amended, the Pipeline Safety Improvement Act of 2002, OSHA Standard 1926.651, and the National Electric Safety Code, ANSI C-2, by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

(4) It is not the purpose of this chapter act to amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.

Section 2. Subsection (8) of section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.--As used in this act:

(8) "Member operator" means any person who furnishes or transports materials or services by means of an underground facility ~~except a small municipality that has elected not to~~

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106 ~~participate in the one call notification system in the manner~~  
107 ~~set forth in s. 556.103(1).~~

108       Section 3. Subsection (1) of section 556.103, Florida  
109 Statutes, is amended to read:

110       556.103 Creation of the corporation; establishment of the  
111 board of directors; authority of the board; annual report.--

112       (1) The "Sunshine State One-Call of Florida, Inc." is  
113 ~~hereby~~ created as a not-for-profit corporation. Each operator of  
114 an underground facility in this state shall be a member of the  
115 corporation and shall use and participate in the system, ~~except~~  
116 ~~that a small city as defined in s. 120.52 may elect by January~~  
117 ~~1, 1998, not to participate in the system until January 1, 2003,~~  
118 ~~through a written notification identifying any reasons for~~  
119 ~~declining membership. The corporation shall be formed by June 1,~~  
120 ~~1993.~~ The corporation shall administer the provisions of this  
121 chapter act. The corporation shall exercise its powers through a  
122 board of directors established pursuant to this section.

123       Section 4. Section 556.104, Florida Statutes, is amended  
124 to read:

125       556.104 Free-access notification system.--The corporation  
126 shall maintain a free-access notification system. Any person who  
127 furnishes or transports materials or services by means of an  
128 underground facility in this state shall participate as a member  
129 operator of the system ~~except that a small city as defined in s.~~  
130 ~~120.52 may elect not to participate in the system in the manner~~  
131 ~~set forth in s. 556.103(1).~~ The purpose of the system is to  
132 receive notification of planned excavation or demolition  
133 activities and to notify member operators of the ~~such~~ planned

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excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities, and the system may also provide additional modes of access at no cost to the user.

Section 5. Section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.--

(1)(a) Not less than 2 ~~nor more than 5~~ full business days before beginning any excavation or demolition, except an excavation beneath the waters of the state, an excavator shall provide the following information through the system:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.

2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.

4. The commencement date and anticipated duration of the excavation or demolition.

5. Whether machinery will be used for the excavation or demolition.

6. The person or entity for whom the work is to be done.

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7. The type of work to be done.

8. The approximate depth of the excavation.

(b) The excavator shall provide the ~~such~~ information by notifying the system through its free-access notification system during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than during business hours shall be considered to be received at the beginning of the next business day.

(c) Information provided by an excavator is ~~shall be~~ considered valid for 30 ~~a period of 20~~ calendar days after the ~~each~~ date such information is provided to the system. In computing the period for which information furnished is considered valid, the date the notice is provided is ~~shall~~ not be counted, but the last day of the ~~such~~ period shall be counted unless it is a Saturday, Sunday, or a legal holiday, in which event, the period runs ~~shall run~~ until the end of the next day that ~~which~~ is not a Saturday, Sunday, or a legal holiday.

(2) Each notification by means of the system shall be recorded to document compliance with this chapter ~~act~~. Such record may be made by means of electronic, mechanical, or any other method of all incoming and outgoing wire and oral communications concerning location requests in compliance with chapter 934. The ~~Such~~ records shall be kept for ~~a period of~~ 5 years and, upon written request, shall be available to the excavator making the request, the member operator intended to receive the request, and their agents. However, custody of the

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189 records may ~~shall~~ not be transferred from the system except  
190 under subpoena.

191       (3) The system shall provide the person who provided  
192 notification with the names of the member operators who shall  
193 ~~will~~ be advised of the notification and a notification number  
194 that ~~which~~ specifies the date and time of the notification.

195       (4) The notification number provided to the excavator  
196 under this section shall be provided to any law enforcement  
197 officer, government code inspector, or code enforcement officer  
198 upon request.

199       (5)~~(4)~~ All member operators within the defined area of a  
200 proposed excavation or demolition shall be promptly notified  
201 through the system, except that member operators with state-  
202 owned underground facilities located within the right-of-way of  
203 a state highway need not be notified of excavation or demolition  
204 activities and are under no obligation to mark or locate the  
205 ~~such~~ facilities.

206       (a) When an excavation site cannot be described in  
207 information provided under subparagraph (1)(a)3. with sufficient  
208 particularity to enable the member operator to ascertain the  
209 excavation site, and if the excavator and member operator have  
210 not mutually agreed otherwise, the excavator shall premark the  
211 proposed area of the excavation before a member operator is  
212 required to identify the horizontal route of its underground  
213 facilities in the proximity of any excavation. However,  
214 premarking is not required for any excavation that is over 500  
215 feet in length and is not required where the premarking could  
216 reasonably interfere with traffic or pedestrian control.



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217           (b) If a member operator determines that a proposed  
218 excavation or demolition is in proximity to or in conflict with  
219 an underground facility of the member operator, except a  
220 facility beneath the waters of the state, which is governed by  
221 paragraph (c), the member operator shall identify the horizontal  
222 route by marking to within 24 inches from the outer edge of  
223 either side of the underground facility by the use of stakes,  
224 paint, flags, or other suitable means within 2 full business  
225 days after the time the notification is received under  
226 subsection (1). If the member operator is unable to respond  
227 within such time, the member operator shall communicate with the  
228 person making the request and negotiate a new schedule and time  
229 that is agreeable to, and should not unreasonably delay, the  
230 excavator.

231           (c) If a member operator determines that a proposed  
232 excavation is in proximity to or in conflict with an underground  
233 facility of the member operator beneath the waters of the state,  
234 the member operator shall identify the estimated horizontal  
235 route of the underground facility, within 10 business days,  
236 using marking buoys or other suitable devices, unless directed  
237 otherwise by an agency having jurisdiction over the waters of  
238 the state under which the member operator's underground facility  
239 is located.

240           (d) When excavation is to take place within a tolerance  
241 zone, an excavator shall use increased caution to protect  
242 underground facilities. The protection requires hand digging,  
243 pot holing, soft digging, vacuum excavation methods, or other  
244 similar procedures to identify underground facilities. Any use

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of mechanized equipment within the tolerance zone must be supervised by the excavator.

(6) (a) ~~(5) (a)~~ An excavator shall avoid excavation in the area described in the notice given under ~~pursuant to~~ subsection (1) until each member operator underground facility has been marked and located or until the excavator has been notified that no member operator has underground facilities in the area described in the notice, or for the time allowed for markings set forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), whichever occurs first. If a member operator has not located and marked its underground facilities within the time allowed for marking set forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), the excavator may proceed with the excavation, if ~~provided~~ the excavator does so with reasonable care, and if ~~provided, further, that~~ detection equipment or other acceptable means to locate underground facilities are used.

(b) An excavator may ~~shall~~ not demolish in the area described in the notice given under ~~pursuant to~~ subsection (1) until all member operator underground facilities have been marked and located, or removed.

(7) (a) ~~(6) (a)~~ A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of paragraphs (5) (b) ~~(4) (b)~~ and (c), but shall provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excavation or demolition is performed

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with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

(b) A member operator may not exercise the exemption provided by this subsection if the member operator has underground facilities that have not been taken out of service and that are locatable using available designating technologies to locate underground facilities.

(8) (a) (7) (a) If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, the term "extraordinary circumstances" means circumstances other than normal operating conditions that ~~which~~ exist and make it impractical for a member operator to comply with ~~the provisions of this chapter act~~. After the system has received notification of a member operator's inability to comply, the system shall make that information known to excavators who subsequently notify the system of an intent to excavate. The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period when extraordinary circumstances exist, the system shall remain available during business hours to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties, unless the system itself has been adversely affected by extraordinary circumstances.

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(9) (a) After receiving notification from the system, a member operator shall provide a positive response to the system within 2 full business days, or 10 such days for an underwater excavation, indicating the status of operations to protect the facility.

~~(8) (a) If a member operator determines that the excavation or demolition is not near an existing underground facility of the member operator, the member operator shall notify the excavator within 2 full business days after the time of the notification to the system that no conflict exists and that the excavation or demolition area is clear. An excavator who has knowledge of the existence of an underground facility of a member operator in the area is responsible for contacting the member operator if a facility is not marked.~~

(b) The system shall establish and maintain a process to facilitate a positive-response communication between member operators and excavators. The system is exempt from any requirement to initiate a positive response to an excavator when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

(c) An excavator shall verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system. The system shall implement procedures for positive response by January 1, 2004.

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(10)-(9) A member operator shall use the "Uniform Color Code for Utilities" ~~recommended guidelines for uniform temporary marking of underground facilities as approved by the Utility Location and Coordinating Council~~ of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

(11)-(10) Before ~~Prior to~~ or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator shall stop excavation or demolition activities in the vicinity of the facility and shall notify the system to have the route remarked.

(12)-(11) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

Section 6. Subsection (2) of section 556.106, Florida Statutes, is amended, present subsection (6) is redesignated as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

556.106 Liability of the member operator, excavator, and system.--

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355           (2) (a) If a ~~In the event any~~ person violates s. 556.105(1)  
356 or (6)(5), and subsequently, whether by himself or herself or  
357 through the person's employees, contractors, subcontractors, or  
358 agents, performs an excavation or demolition that ~~which~~ damages  
359 an underground facility of a member operator, it is ~~shall be~~  
360 rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~  
361 person, if found liable, is ~~shall be~~ liable for the total sum of  
362 the losses to all member operators involved as those costs are  
363 normally computed. Any damage for loss of revenue and loss of  
364 use may ~~shall~~ not exceed \$500,000 per affected underground  
365 facility, except that revenues lost by a governmental member  
366 operator whose, ~~which~~ revenues are used to support payments on  
367 principal and interest on bonds may, ~~shall~~ not be limited. Any  
368 liability of the state and its agencies and its subdivisions  
369 which arises out of this chapter is ~~shall be~~ subject to the  
370 provisions of s. 768.28.

371           (b) If any excavator fails to discharge a duty imposed by  
372 the provisions of this chapter act, the ~~such~~ excavator, if found  
373 liable, is ~~shall be~~ liable for the total sum of the losses to  
374 all parties involved as those costs are normally computed. Any  
375 damage for loss of revenue and loss of use may ~~shall~~ not exceed  
376 \$500,000 per affected underground facility, except that revenues  
377 lost by a governmental member operator whose, ~~which~~ revenues are  
378 used to support payments on principal and interest on bonds may,  
379 ~~shall~~ not be limited.

380           (c) Any liability of the state, its agencies, or its  
381 subdivisions which arises out of this chapter is act ~~shall be~~  
382 subject to the provisions of s. 768.28.

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(d) Obtaining information as to the location of an underground facility from the member operator as required by this chapter ~~act~~ does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, and it ~~nor does not~~ it excuse the ~~such~~ excavator from liability for any damage or injury resulting from any excavation or demolition.

~~(e) When an excavator knows or should know of the presence of an underground facility of a nonmember small city as defined in s. 120.52, he or she shall make reasonable efforts to contact the small city that owns or operates that facility prior to commencing an excavation or demolition.~~

(6) The system does not have a duty to mark or locate underground facilities and may not do so, and a right of recovery does not exist against the system for failing to mark or locate underground facilities. The system is not liable for the failure of a member operator to comply with the requirements of this chapter.

~~(7)-(6)~~ An excavator who performs any excavation with hand tools under ~~pursuant to~~ s. 556.108(4)(c) or (5) is liable for any damage to any operator's underground facilities damaged during such excavation.

Section 7. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.--

(1) NONCRIMINAL INFRACTIONS.--

(a) Violations of the following provisions are noncriminal infractions:

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411           1. Section 556.105(1), relating to providing required  
412 information.

413           2. Section 556.105(6) ~~556.105(5)~~, relating to the  
414 avoidance of excavation.

415           3. Section 556.105(11) ~~556.105(10)~~, relating to the need  
416 to stop excavation or demolition.

417           4. Section 556.105(12) ~~556.105(11)~~, relating to the need  
418 to cease excavation or demolition activities.

419           5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to  
420 identification of underground facilities, if a member operator  
421 does not mark an underground facility, but not if a member  
422 operator marks an underground facility incorrectly.

423           (b) Any excavator or member operator who commits a  
424 noncriminal infraction under paragraph (a) may be issued a  
425 citation by any local or state law enforcement officer,  
426 government code inspector, or code enforcement officer  
427 ~~permitting agency inspector~~, and the issuer of a citation may  
428 require an ~~any~~ excavator to cease work on any excavation or not  
429 start a proposed excavation until there has been compliance with  
430 the provisions of this chapter act. Citations shall ~~may~~ be hand-  
431 delivered ~~issued~~ to any employee of the excavator or member  
432 operator who is ~~directly~~ involved in the noncriminal infraction.  
433 The citation shall be issued in the name of the excavator or  
434 member operator, whichever is applicable.

435           (c) Any excavator or member operator who commits a  
436 noncriminal infraction under paragraph (a) may be required to  
437 appear before the county court. The civil penalty for any such  
438 infraction is \$250 plus court costs, except as otherwise



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439 provided in this section. If a citation is issued by a local law  
 440 enforcement officer, a local government code inspector, or a  
 441 code enforcement officer, 80 percent of the civil penalty  
 442 collected by the clerk of the court shall be distributed to the  
 443 local governmental entity whose employee issued the citation and  
 444 20 percent of the penalty shall be retained by the clerk to  
 445 cover administrative costs, in addition to other court costs. If  
 446 a citation is issued by a state law enforcement officer, the  
 447 civil penalty collected by the clerk shall be retained by the  
 448 clerk for deposit into the fine and forfeiture fund established  
 449 pursuant to s. 142.01. Any person who fails to appear or  
 450 otherwise properly respond to a citation issued pursuant to  
 451 paragraph (d) shall, in addition to the citation, be charged  
 452 with the offense of failing to respond to such citation and,  
 453 upon conviction, commits ~~be guilty of~~ a misdemeanor of the  
 454 second degree, punishable as provided in s. 775.082 or s.  
 455 775.083. A written warning to this effect shall be provided at  
 456 the time any citation is issued pursuant to paragraph (b).  
 457 (d) Any person cited for an infraction under paragraph  
 458 (a), unless required to appear before the county court, may:  
 459 1. Post a bond, which shall be equal in amount to the  
 460 applicable civil penalty plus court costs; or  
 461 2. Sign and accept a citation indicating a promise to  
 462 appear before the county court.  
 463  
 464 The person issuing the citation ~~officer~~ may indicate on the  
 465 citation the time and location of the scheduled hearing and  
 466 shall indicate the applicable civil penalty.

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(e) Any person charged with a noncriminal infraction under paragraph (a), unless required to appear before the county court, may:

1. Pay the civil penalty plus court costs, in lieu of appearance, either by mail or in person, within 30 ~~10~~ days after the date of receiving the citation; or

2. Forfeit bond, if a bond has been posted, by not appearing at the designated time and location.

If the person cited follows either of the above procedures, she or he is ~~shall be~~ deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The ~~Such~~ admission may be used as evidence in any other proceeding under this chapter ~~act~~.

(f) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed \$5,000 plus court costs. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

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(h) If a person is found by the hearing official to have committed an infraction, the ~~such~~ person may appeal that finding to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court finds that an infraction of the chapter was committed. An appellant in the circuit court proceeding shall timely notify the corporation of any appeal under this section.

(2) MISDEMEANORS.--Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(b) ~~s. 556.105(4)(b)~~ and (c) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 ~~20~~ calendar days after information is provided to the system under s. 556.105(1)(c).

Section 8. Subsections (1), (4), and (5) of section 556.108, Florida Statutes, are amended to read:

556.108 Exemptions.--The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of a single-family residential property, not including property that is subdivided or is to be subdivided into more than one single-family residential property; or for such owner by a

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521 member operator or an agent of a member operator when such  
522 excavation or demolition is made entirely on such land, and only  
523 up to a depth of 10 inches; provided due care is used and there  
524 is no encroachment on any member operator's right-of-way,  
525 easement, or permitted use.

526 (4) Any excavation of 18 inches or less for:

527 (a) Surveying public or private property by surveyors or  
528 mappers as defined in chapter 472 and services performed by a  
529 pest control licensee under chapter 482, excluding marked  
530 rights-of-way, marked easements, or permitted uses where marked,  
531 if provided mechanized equipment is not used in the process of  
532 such surveying or pest control services and the surveying or  
533 pest control services are ~~is~~ performed in accordance with the  
534 practice rules established under s. 472.027 or s. 482.051,  
535 respectively; or

536 (b) Maintenance activities performed by a state agency and  
537 its employees when such activities are within the right-of-way  
538 of a public road; however, provided, if a member operator has  
539 permanently marked facilities on such right-of-way, ~~no~~  
540 mechanized equipment may not be used without first providing  
541 notification; or

542 (c) Locating, repairing, connecting, adjusting, or routine  
543 maintenance of a private or public underground utility facility  
544 by an excavator, if the excavator is performing such work for  
545 the current owner or future owner of the underground facility  
546 and if mechanized equipment is not used.

547 (5) Any excavation with hand tools by a member operator or  
548 an agent of a member operator for:

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549           (a) Locating, repairing, connecting, or protecting, or  
550 routine maintenance of, the member operator's underground  
551 facilities; or

552           (b) The extension of a member operator's underground  
553 facilities onto the property of a person to be served by such  
554 facilities.

555           ~~(c)~~ The exemption provided in this subsection ~~paragraphs~~  
556 ~~(a) and (b)~~ is limited to excavations to a depth of 30 inches if  
557 the right-of-way has permanently marked facilities of a company  
558 other than the member operator or its agents performing the  
559 excavation.

560           Section 9. This act shall take effect October 1, 2006.

## Amendment No. (for drafter's use only)

COUNCIL/COMMITTEE ACTION



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 821 CS


Homeownership Assistance Contribution Tax Credit Program

**SPONSOR(S):** Goodlette

**TIED BILLS:**

**IDEN./SIM. BILLS:** 784

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>Nelson</u>	<u>Hamby</u>
3) <u>Finance &amp; Tax Committee</u>	<u></u>	<u>Rice</u> <i>ACR</i>	<u>Diez-Arguelles</u> 
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill increases the amount of tax credits authorized for the Community Contribution Tax Credit Program from \$12 million to \$13 million. It provides separate annual limitations for tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households, and for donations made to eligible sponsors for all other projects. The bill establishes the annual limitation for homeownership projects at \$10 million and the annual limitation for all other projects located in enterprise zones or Front Porch Florida Communities at \$3 million.

This bill eliminates the requirement that the Office of Tourism, Trade and Economic Development reserve specified percentages of annual tax credits for particular projects. It also eliminates the requirement that the Florida Housing Finance Corporation be involved in the marketing of the Community Contribution Tax Credit. Changes made by this bill reflect recommendations contained in Senate Interim Project Report 2006-148.

The Revenue Estimating Conference has determined that the bill will result in a loss of (\$0.9) million in state revenues and (\$ 0.1) million in local revenues in FY 2006-2007 and FY 2007-2008.

The effective date of this bill is July 1, 2006.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill will provide an increased amount of tax credits for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households and for donations made to eligible sponsors for all other projects that qualify under the Community Contribution Tax Credit Program.

#### B. EFFECT OF PROPOSED CHANGES

##### Present Situation

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects. The program offers tax credits, in the form of a refund, to persons who donate to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade and Economic Development (OTTED) is responsible for marketing the program in consultation with the Florida Housing Finance Corporation and other housing and financial intermediaries. OTTED is also responsible for administering the program by reviewing sponsor project proposals and tax credit applications. To date, 167 sponsors/projects have been approved to participate in the program. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR).

The tax credits are equal to 50 percent of the amount donated up to \$200,000 annually. The tax credit may be applied toward the donor's sales and use, corporate, or insurance premium tax obligations. The taxpayer may only apply the credits toward one tax obligation. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

During the first six months of the fiscal year, OTTED is required to reserve \$9.4 million of the allocated credits for low<sup>1</sup> and very-low income<sup>2</sup> household project donations and \$2.6 million for other projects.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The program began with an annual \$3 million cap and it is currently \$12 million. The expiration of the program has been extended from 2005 to June 30, 2015.

##### Effect of Proposed Changes

The bill increases the total amount of credits allocated to the Community Contribution Tax Credit Program from \$12 million to \$13 million annually. It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to provide new allocations of the available \$13 million in tax credits.

First, the bill removes the requirement that OTTED reserve specific amounts during the first six months of the fiscal year for particular project donations. In its place, it requires that \$10 million of the tax

credits be reserved for donations made to projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19)<sup>1</sup> and (28),<sup>2</sup> F.S., and \$3 million be reserved for all other projects.

The bill also eliminates the requirement that OTTED work in consultation with the Florida Housing Finance Corporation to market the Community Contribution Tax Credit Program.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to increase the amount of available tax credits, provide separate annual limitations for sales tax credits, eliminate the reservation of available tax credits, and renumber sub-paragraphs.

Section 2: Amends s. 220.183, F.S., to increase the amount of available tax credits, provide separate annual limitations for corporate tax credits, and eliminate the reservation of available tax credits.

Section 3: Amends s. 624.5105, F.S., to increase availability of tax credits, provide separate annual limitations for insurance premium tax credits, and eliminate the reservation of available tax credits.

Section 4: Provides that the bill take effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

	<u>FY 2006-07</u>	<u>FY 2007-2008</u>
General Revenue		
Corporate	(\$0.1)m	(\$0.1)m
Sales	(\$0.8)m	(\$0.8)m
State Trust	<u>(Indeterminate)</u>	<u>(Indeterminate)</u>
Total	(\$0.9)m	(\$0.9)m

#### 2. Expenditures:

None

<sup>1</sup> Section 420.9071(19), F.S., defines "low-income person" or "low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

<sup>2</sup>Section 420.9071(28), F.S., defines "Very-low-income person" or "very-low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the non-metropolitan median for the state, whichever is greatest. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:****1. Revenues:**

	<u>FY 2006-07</u>	<u>FY 2007-2008</u>
Local Revenues	(\$0.1)m	(\$0.1)m
Total	(\$0.1)m	(\$0.1)m

**2. Expenditures:**

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive impact on the number of low-income homes and other projects that are built and conducted each year.

**D. FISCAL COMMENTS:**

The table below shows the tax credits granted for housing projects and for other community development projects during the past 10 years. There were significant tax credits unused for the first two years after the cap was increased to \$10 million. Subsequently, the entire allocation has been used.

**COMMUNITY CONTRIBUTION TAX CREDIT PROGRAM  
TAX CREDIT SUMMARY FY 1995/96 – FY 2005/06**

FISCAL YEAR	APPROVED APPLICATIONS	HOUSING TAX CREDITS	COMMUNITY DEVELOPMENT TAX CREDITS	TOTAL CREDITS APPROVED	CREDITS REMAINING	ANNUAL ALLOCATION
1995/96	75	\$465,542	\$1,472,255	\$1,937,797	\$62,203	\$2,000,000
1996/97	69	\$1,043,256	\$1,018,947	\$2,062,203	\$-62,203	\$2,000,000
1997/98	81	\$1,348,500	\$651,500	\$2,000,000	\$0	\$2,000,000
1998/99	75	\$2,720,441	\$2,279,559	\$5,000,000	\$0	\$5,000,000
1999/00	198	\$3,764,283	\$1,302,178	\$5,066,461	\$4,933,539	\$10,000,000
2000/01	223	\$5,320,890	\$744,365	\$6,065,255	\$3,934,745	\$10,000,000
2001/02	322	\$9,484,489	\$515,464	\$9,999,953	\$47	\$10,000,000
2002/03	359	\$8,914,456	\$1,085,544	\$10,000,000	\$0	\$10,000,000
2003/04	285	\$8,622,769	\$1,377,231	\$10,000,000	\$0	\$10,000,000
2004/05	251	\$8,051,618	\$1,948,382	\$10,000,000	\$0	\$10,000,000
2005/06	285	\$9,558,883	\$2,441,117	\$12,000,000	\$0	\$12,000,000
<b>10 YEAR TOTALS</b>	<b>2,223</b>	<b>\$59,295,127</b>	<b>\$14,836,542</b>	<b>\$74,131,669</b>	<b>\$8,868,331</b>	<b>\$83,000,000</b>

Source: OTTED

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues

Section 624.05(3), F.S., defines the term "office" to mean the Office of Insurance Regulation (OIR) of the Financial Services Commission for purposes of the Insurance Code. By striking s. 624.5105(2)(e)1., F.S., the reference to the Office of Tourism, Trade and Economic Development has been deleted so that the subsequent use of the term "office" in that section would refer to the OIR. Accordingly, the term "office" should be amended to read the "Office of Tourism, Trade and Economic Development."

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment that:

- conforms the House bill to the Senate bill, correcting technical errors in the House bill and restoring current law applicable to credit applications and review processes;
- provides for two separate funding pools: one for projects that provide homeownership opportunities for low-income and very-low-income Floridians, capped at \$10 million; and another for projects that provide enhanced community development, capped at \$3 million (a \$1 million total increase from current law); and
- removes language that requires OTTED to reserve a portion of available credits in each pool for the first six months of the year and allow leftover credits to be transferred between pools.

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CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends  
the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the community contribution tax credit  
program; amending ss. 212.08, 220.183, and 624.5105, F.S.;  
increasing the amount of available tax credits against the  
sales tax, corporate income tax, and insurance premium  
tax, respectively, for projects under the community  
contribution tax credit program and providing separate  
annual limitations for certain projects; revising  
requirements and procedures for the Office of Tourism,  
Trade, and Economic Development in granting tax credits  
under the program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (q) of subsection (5) of section  
212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and  
storage tax; specified exemptions.--The sale at retail, the

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rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(q) Community contribution tax credit for donations.--

1. Authorization.--~~Beginning July 1, 2001,~~ Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.†

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.†

c. A person may not receive more than \$200,000 in annual tax credits for all approved community contributions made in any one year.†

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d. All proposals for the granting of the tax credit require the prior approval of the Office of Tourism, Trade, and Economic Development. ~~↗~~

e. The total amount of tax credits which may be granted for all programs approved under this paragraph, s. 220.183, and s. 624.5105 is \$10 ~~\$12~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and \$3 million annually for all other projects. ~~↗ and~~

f. A person who is eligible to receive the credit provided for in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under the one section of the person's choice.

2. Eligibility requirements.--

a. A community contribution by a person must be in the following form:

- (I) Cash or other liquid assets;
- (II) Real property;
- (III) Goods or inventory; or
- (IV) Other physical resources as identified by the Office of Tourism, Trade, and Economic Development.

b. All community contributions must be reserved exclusively for use in a project. As used in this subparagraph, the term "project" means any activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28); designed to provide commercial, industrial, or public resources and facilities; or designed to

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improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in rural communities with enterprise zones, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31, 1999, and located in an enterprise zone designated pursuant to s. 290.0065. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income or very-low-income households on scattered sites. With respect to housing, contributions may be used to pay the following eligible low-income and very-low-income housing-related activities:

(I) Project development impact and management fees for low-income or very-low-income housing projects;

(II) Down payment and closing costs for eligible persons, as defined in s. 420.9071(19) and (28);

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to low-income or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments when satisfaction of the lien is a necessary precedent to the transfer of the property to an eligible person, as defined in s. 420.9071(19) and (28), for the purpose of



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106 promoting home ownership. Contributions for lien removal must be  
107 received from a nonrelated third party.

108 c. The project must be undertaken by an "eligible  
109 sponsor," which includes:

110 (I) A community action program;

111 (II) A nonprofit community-based development organization  
112 whose mission is the provision of housing for low-income or  
113 very-low-income households or increasing entrepreneurial and  
114 job-development opportunities for low-income persons;

115 (III) A neighborhood housing services corporation;

116 (IV) A local housing authority created under chapter 421;

117 (V) A community redevelopment agency created under s.  
118 163.356;

119 (VI) The Florida Industrial Development Corporation;

120 (VII) A historic preservation district agency or  
121 organization;

122 (VIII) A regional workforce board;

123 (IX) A direct-support organization as provided in s.  
124 1009.983;

125 (X) An enterprise zone development agency created under s.  
126 290.0056;

127 (XI) A community-based organization incorporated under  
128 chapter 617 which is recognized as educational, charitable, or  
129 scientific pursuant to s. 501(c)(3) of the Internal Revenue Code  
130 and whose bylaws and articles of incorporation include  
131 affordable housing, economic development, or community  
132 development as the primary mission of the corporation;

133 (XII) Units of local government;

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(XIII) Units of state government; or

(XIV) Any other agency that the Office of Tourism, Trade,  
and Economic Development designates by rule.

In no event may a contributing person have a financial interest  
in the eligible sponsor.

d. The project must be located in an area designated an  
enterprise zone or a Front Porch Florida Community pursuant to  
s. 20.18(6), unless the project increases access to high-speed  
broadband capability for rural communities with enterprise zones  
but is physically located outside the designated rural zone  
boundaries. Any project designed to construct or rehabilitate  
housing for low-income or very-low-income households as defined  
in s. 420.0971(19) and (28) is exempt from the area requirement  
of this sub-subparagraph.

~~e. (I) For the first 6 months of the fiscal year, the  
Office of Tourism, Trade, and Economic Development shall reserve  
80 percent of the first \$10 million in available annual tax  
credits and 70 percent of any available annual tax credits in  
excess of \$10 million for donations made to eligible sponsors  
for projects that provide homeownership opportunities for low-  
income or very low income households as defined in s.  
420.9071(19) and (28). If any such reserved annual tax credits  
remain after the first 6 months of the fiscal year, the office  
may approve the balance of these available credits for donations  
made to eligible sponsors for projects other than those that  
provide homeownership opportunities for low income or very low  
income households.~~

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162       ~~(II) For the first 6 months of the fiscal year, the office~~  
163 ~~shall reserve 20 percent of the first \$10 million in available~~  
164 ~~annual tax credits and 30 percent of any available annual tax~~  
165 ~~credits in excess of \$10 million for donations made to eligible~~  
166 ~~sponsors for projects other than those that provide~~  
167 ~~homeownership opportunities for low income or very low income~~  
168 ~~households as defined in s. 420.9071(19) and (28). If any~~  
169 ~~reserved annual tax credits remain after the first 6 months of~~  
170 ~~the fiscal year, the office may approve the balance of these~~  
171 ~~available credits for donations made to eligible sponsors for~~  
172 ~~projects that provide homeownership opportunities for low income~~  
173 ~~or very low income households.~~

174       (I)~~(III)~~ If, during the first 10 business days of the  
175 state fiscal year, eligible tax credit applications for projects  
176 that provide homeownership opportunities for low-income or very-  
177 low-income households as defined in s. 420.9071(19) and (28) are  
178 received for less than the available annual tax credits  
179 available for those projects reserved under sub-sub-subparagraph  
180 ~~(I)~~, the office shall grant tax credits for those applications  
181 and shall grant remaining tax credits on a first-come, first-  
182 served basis for any subsequent eligible applications received  
183 before the end of the ~~first 6 months of the~~ state fiscal year.  
184 If, during the first 10 business days of the state fiscal year,  
185 eligible tax credit applications for projects that provide  
186 homeownership opportunities for low-income or very-low-income  
187 households as defined in s. 420.9071(19) and (28) are received  
188 for more than the available annual tax credits available for  
189 those projects reserved under sub-sub-subparagraph (I), the

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office shall grant the tax credits for those the applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed \$200,000 in total, the credits shall be granted in full if the tax credit applications are approved, ~~subject to sub-sub-subparagraph (I).~~

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed \$200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits ~~under sub-sub-subparagraph (I)~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~(C) If, after the first 6 months of the fiscal year, additional credits become available under sub-sub-subparagraph (II), the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first come, first served basis.~~

~~(II)-(IV)~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the available annual tax credits available for those projects reserved under ~~sub-sub-subparagraph (II)~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on

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218 a first-come, first-served basis for any subsequent eligible  
219 applications received before the end of ~~the first 6 months of~~  
220 the state fiscal year. If, during the first 10 business days of  
221 the state fiscal year, eligible tax credit applications for  
222 projects other than those that provide homeownership  
223 opportunities for low-income or very-low-income households as  
224 defined in s. 420.9071(19) and (28) are received for more than  
225 the ~~available~~ annual tax credits available for those projects  
226 ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant  
227 the tax credits for those ~~the~~ applications on a pro rata basis.  
228 ~~If, after the first 6 months of the fiscal year, additional~~  
229 ~~credits become available under sub-sub-subparagraph (I), the~~  
230 ~~office shall grant the tax credits by first granting to those~~  
231 ~~who received a pro rata reduction up to the full amount of their~~  
232 ~~request and, if there are remaining credits, granting credits to~~  
233 ~~those who applied on or after the 11th business day of the state~~  
234 ~~fiscal year on a first come, first served basis.~~

235 3. Application requirements.--

236 a. Any eligible sponsor seeking to participate in this  
237 program must submit a proposal to the Office of Tourism, Trade,  
238 and Economic Development which sets forth the name of the  
239 sponsor, a description of the project, and the area in which the  
240 project is located, together with such supporting information as  
241 is prescribed by rule. The proposal must also contain a  
242 resolution from the local governmental unit in which the project  
243 is located certifying that the project is consistent with local  
244 plans and regulations.

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b. Any person seeking to participate in this program must submit an application for tax credit to the office ~~of Tourism, Trade, and Economic Development~~ which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit. The person must submit a separate tax credit application to the office for each individual contribution that it makes to each individual project.

c. Any person who has received notification from the office ~~of Tourism, Trade, and Economic Development~~ that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within any 12-month period.

4. Administration.--

a. The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the office ~~of Tourism, Trade, and Economic Development~~ must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the office shall transmit a copy of the decision to the Department of Revenue.

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c. ~~The office of Tourism, Trade, and Economic Development~~  
shall periodically monitor all projects in a manner consistent  
with available resources to ensure that resources are used in  
accordance with this paragraph; however, each project must be  
reviewed at least once every 2 years.

d. ~~The office of Tourism, Trade, and Economic Development~~  
shall, in consultation with the Department of Community Affairs,  
~~the Florida Housing Finance Corporation,~~ and the statewide and  
regional housing and financial intermediaries, market the  
availability of the community contribution tax credit program to  
community-based organizations.

5. Expiration.--This paragraph expires June 30, 2015;  
however, any accrued credit carryover that is unused on that  
date may be used until the expiration of the 3-year carryover  
period for such credit.

Section 2. Paragraph (c) of subsection (1) and paragraph  
(b) of subsection (2) of section 220.183, Florida Statutes, are  
amended to read:

220.183 Community contribution tax credit.--

(1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX  
CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM  
SPENDING.--

(c) The total amount of tax credit which may be granted  
for all programs approved under this section, s. 212.08(5)(q),  
and s. 624.5105 is \$10 \$12 million annually for projects that  
provide homeownership opportunities for low-income or very-low-  
income households as defined in s. 420.9071(19) and (28) and \$3  
million annually for all other projects.

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(2) ELIGIBILITY REQUIREMENTS.--

(b)1. All community contributions must be reserved exclusively for use in projects as defined in s. 220.03(1)(t).

~~2. For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first \$10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of \$10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very low income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low income or very low income households.~~

~~3. For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first \$10 million in available annual tax credits, and 30 percent of any available annual tax credits in excess of \$10 million, for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low income or very low income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low income or very low income households.~~



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329        2.4- If, during the first 10 business days of the state  
330        fiscal year, eligible tax credit applications for projects that  
331        provide homeownership opportunities for low-income or very-low-  
332        income households as defined in s. 420.9071(19) and (28) are  
333        received for less than the ~~available~~ annual tax credits  
334        available for those projects ~~reserved under subparagraph 2-~~, the  
335        office shall grant tax credits for those applications and shall  
336        grant remaining tax credits on a first-come, first-served basis  
337        for any subsequent eligible applications received before the end  
338        of the ~~first 6 months of the~~ state fiscal year. If, during the  
339        first 10 business days of the state fiscal year, eligible tax  
340        credit applications for projects that provide homeownership  
341        opportunities for low-income or very-low-income households as  
342        defined in s. 420.9071(19) and (28) are received for more than  
343        the ~~available~~ annual tax credits available for those projects  
344        ~~reserved under subparagraph 2-~~, the office shall grant the tax  
345        credits for those ~~such~~ applications as follows:

346        a. If tax credit applications submitted for approved  
347        projects of an eligible sponsor do not exceed \$200,000 in total,  
348        the credit shall be granted in full if the tax credit  
349        applications are approved, ~~subject to the provisions of~~  
350        ~~subparagraph 2-~~.

351        b. If tax credit applications submitted for approved  
352        projects of an eligible sponsor exceed \$200,000 in total, the  
353        amount of tax credits granted under sub-subparagraph a. shall be  
354        subtracted from the amount of available tax credits ~~under~~  
355        ~~subparagraph 2-~~, and the remaining credits shall be granted to  
356        each approved tax credit application on a pro rata basis.

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357        ~~e. If, after the first 6 months of the fiscal year,~~  
358        ~~additional credits become available pursuant to subparagraph 3.,~~  
359        ~~the office shall grant the tax credits by first granting to~~  
360        ~~those who received a pro rata reduction up to the full amount of~~  
361        ~~their request and, if there are remaining credits, granting~~  
362        ~~credits to those who applied on or after the 11th business day~~  
363        ~~of the state fiscal year on a first come, first served basis.~~

364        3.5- If, during the first 10 business days of the state  
365        fiscal year, eligible tax credit applications for projects other  
366        than those that provide homeownership opportunities for low-  
367        income or very-low-income households as defined in s.  
368        420.9071(19) and (28) are received for less than the available  
369        annual tax credits available for those projects ~~reserved under~~  
370        ~~subparagraph 3.,~~ the office shall grant tax credits for those  
371        applications and shall grant remaining tax credits on a first-  
372        come, first-served basis for any subsequent eligible  
373        applications received before the end of the ~~first 6 months of~~  
374        ~~the~~ state fiscal year. If, during the first 10 business days of  
375        the state fiscal year, eligible tax credit applications for  
376        projects other than those that provide homeownership  
377        opportunities for low-income or very-low-income households as  
378        defined in s. 420.9071(19) and (28) are received for more than  
379        the ~~available~~ annual tax credits available for those projects  
380        ~~reserved under subparagraph 3.,~~ the office shall grant the tax  
381        credits for those ~~such~~ applications on a pro rata basis. ~~If,~~  
382        ~~after the first 6 months of the fiscal year, additional credits~~  
383        ~~become available under subparagraph 2., the office shall grant~~  
384        ~~the tax credits by first granting to those who received a pro~~

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~~rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first come, first served basis.~~

Section 3. Paragraph (c) of subsection (1) and paragraph (e) of subsection (2) of section 624.5105, Florida Statutes, are amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.--

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. 212.08(5)(q) and 220.183 is \$10 \$12 million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and \$3 million annually for all other projects.

(2) ELIGIBILITY REQUIREMENTS.--

~~(e)1. For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first \$10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of \$10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very low income households as defined in s. 420.9071(19) and (28). If any such reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations~~

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~~made to eligible sponsors for projects other than those that  
provide homeownership opportunities for low income or very low  
income households.~~

~~2. For the first 6 months of the fiscal year, the office  
shall reserve 20 percent of the first \$10 million in available  
annual tax credits, and 30 percent of any available annual tax  
credits in excess of \$10 million, for donations made to eligible  
sponsors for projects other than those that provide  
homeownership opportunities for low income or very low income  
households as defined in s. 420.9071(19) and (28). If any  
reserved annual tax credits remain after the first 6 months of  
the fiscal year, the office may approve the balance of these  
available credits for donations made to eligible sponsors for  
projects that provide homeownership opportunities for low income  
or very low income households.~~

~~1.3.~~ If, during the first 10 business days of the state  
fiscal year, eligible tax credit applications for projects that  
provide homeownership opportunities for low-income or very-low-  
income households as defined in s. 420.9071(19) and (28) are  
received for less than the available annual tax credits  
available for those projects reserved under subparagraph 1., the  
office shall grant tax credits for those applications and shall  
grant remaining tax credits on a first-come, first-served basis  
for any subsequent eligible applications received before the end  
of the ~~first 6 months of the~~ state fiscal year. If, during the  
first 10 business days of the state fiscal year, eligible tax  
credit applications for projects that provide homeownership  
opportunities for low-income or very-low-income households as

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441 defined in s. 420.9071(19) and (28) are received for more than  
442 the ~~available~~ annual tax credits available for those projects  
443 ~~reserved under subparagraph 1.~~, the office shall grant the tax  
444 credits for those ~~the~~ applications as follows:

445       a. If tax credit applications submitted for approved  
446 projects of an eligible sponsor do not exceed \$200,000 in total,  
447 the credits shall be granted in full if the tax credit  
448 applications are approved, ~~subject to subparagraph 1.~~

449       b. If tax credit applications submitted for approved  
450 projects of an eligible sponsor exceed \$200,000 in total, the  
451 amount of tax credits granted under sub-subparagraph a. shall be  
452 subtracted from the amount of available tax credits ~~under~~  
453 ~~subparagraph 1.~~, and the remaining credits shall be granted to  
454 each approved tax credit application on a pro rata basis.

455       ~~c. If, after the first 6 months of the fiscal year,~~  
456 ~~additional credits become available under subparagraph 2., the~~  
457 ~~office shall grant the tax credits by first granting to those~~  
458 ~~who received a pro rata reduction up to the full amount of their~~  
459 ~~request and, if there are remaining credits, granting credits to~~  
460 ~~those who applied on or after the 11th business day of the state~~  
461 ~~fiscal year on a first come, first served basis.~~

462       2.4. If, during the first 10 business days of the state  
463 fiscal year, eligible tax credit applications for projects other  
464 than those that provide homeownership opportunities for low-  
465 income or very-low-income households as defined in s.  
466 420.9071(19) and (28) are received for less than the available  
467 annual tax credits available for those projects ~~reserved under~~  
468 ~~subparagraph 2.~~, the office shall grant tax credits for those

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applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of~~ the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the available annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant the tax credits for those the applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 1., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first come, first served basis.~~

Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **821 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill:

2 Representative(s) Stargel offered the following:

3  
4 **Amendment (with directory and title amendments)**

5 On line(s) 180, 335 and 434 remove:

6 office

7  
8 and insert:

9 Office of Tourism, Trade, and Economic Development ~~office~~

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 857

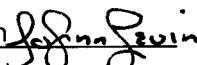

Insurance Premium Tax

**SPONSOR(S):** Mahon

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1714

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Levin 	Diez-Arguelles 
2) Civil Justice Committee			
3) Fiscal Council			
4)			
5)			

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### SUMMARY ANALYSIS

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter governs title insurance contracts specifically. Title insurance is sold as part of the initial purchase or refinance of real property. A title search generally is conducted by an attorney or other qualified person.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. The word "premium" is defined to mean the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. This definition of the word premium, as the gross receipts for a policy without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies. Staff of Department of Financial Services (DFS) report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance.

HB 857 reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

The Revenue Estimating Conference considered the fiscal impact of HB 857 at its meeting on February 24, 2006. The Conference adopted a projected impact to the General Revenue Fund of negative (\$2.6 million) in FY 2006-2007, negative (\$7.6 million) in FY 2007-2008, and negative (\$11.3 million) recurring in years thereafter.

The bill becomes effective January 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes:

The bill will decrease premium taxes paid on title insurance policies.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The DFS regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insurers remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

##### Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Title insurance is different in some respects from many other types of insurance. Property, health, life, and casualty insurance generally protect the policy owner against the possibility of an unknown future

risk. Title insurance, because it requires a review of the historical records relating to real property, protects the owner or borrower from a known risk, i.e. that the parcel of property is free of liens, encumbrances, and other defects and is therefore available for sale. There is generally an additional measure of security inherent in title insurance, because most real estate has been sold previously and, its title has been researched each time the property has been sold.

#### Changes Proposed by the Bill

Section 624.509, F.S., is amended to provide that the 1.75-percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill specifies that the commission, and thus the portion of the title insurance premium that is exempt from the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

Section 627.7711, F.S., the law containing the definitions relating to title insurance, is also amended. A cross-reference to section 624.509, F.S., the law describing the 1.75-percent tax due for insurance premium gross receipts, is deleted. This change conforms the law to the other changes proposed by the bill.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75-percent tax due on all insurance premiums, except annuity policies and contracts. The bill specifies that up to 70 percent of title insurance gross receipts are exempt from the general tax on insurance premiums if that money is retained by or paid under contract to an insurance agent, i.e., as a commission.

Section 2 Amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 Provides that the bill takes effect January 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of HB 857 at its meeting on February 24, 2006.

	<u>FY 2006-2007</u>	<u>FY 2007-2008</u>
General Revenue	(\$2.6 million)	(\$7.6 million)

##### 2. Expenditures:

None

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers will pay less insurance premium taxes.

D. FISCAL COMMENTS:

When fully implemented, the provisions of this bill will result in a reduction of \$11.3 million in state revenues in future years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to the insurance premium tax; amending s. 624.509, F.S.; providing for separate taxation of certain title insurance gross receipts; providing limitations; amending s. 627.7711, F.S.; revising the definition of the term "premium"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.--

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts, ~~except annuity policies~~ or contracts taxable under paragraph (b) and title insurance

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policies or contracts written through affiliated and  
nonaffiliated agencies taxable under paragraph (c),<sup>+</sup> covering  
property, subjects, or risks located, resident, or to be  
performed in this state, omitting premiums on reinsurance  
accepted, and less return premiums or assessments, but without  
deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or  
certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment  
of premiums or assessments; and

4. On account of dividends of any nature or amount paid  
and credited or allowed to holders of insurance policies;  
certificates; or surety, indemnity, reciprocal, or  
interinsurance contracts or agreements.~~7~~ <sup>and</sup>

(b) An amount equal to 1 percent of the gross receipts on  
annuity policies or contracts paid by holders thereof in this  
state.

(c) An amount equal to 1.75 percent of the gross receipts  
on title insurance written through affiliated and nonaffiliated  
agencies, less the portion of the gross receipts retained by or  
paid under contract to the affiliated and nonaffiliated title  
insurance agents. The reduction in the insurer's total amount of  
title insurance premium gross receipts received through  
affiliated and nonaffiliated agencies may not exceed the  
following percentages of the total title insurance premium gross  
receipts received by the insurer through affiliated and  
nonaffiliated agencies:

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1. For 2007, 20 percent.

2. For 2008, 45 percent.

3. For 2009 and subsequent years, 70 percent.

Section 2. Subsection (2) of section 627.7711, Florida Statutes, is amended to read:

627.7711 Definitions.--As used in this part, the term:

(2) "Premium" means the charge, as specified by rule of the commission, that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms, ~~and upon which charge a premium tax is paid under s. 624.509.~~ As used in this part or in any other law, with respect to title insurance, the word "premium" does not include a commission.

Section 3. This act shall take effect January 1, 2007.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1031 CS

Pawnbroking

**SPONSOR(S):** Kyle

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1870

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	6 Y, 0 N, w/CS	Reese	Reese
2) Finance & Tax Committee		Rice <i>ACR</i>	Diez-Arguelles <i>[Signature]</i>
3) State Resources Council			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

Currently, the cities of Miami and Fort Lauderdale have a \$1.50 transaction fee that is assessed by ordinance against all pawn transactions. Although not prohibited, this fee is not explicitly authorized in the Florida Pawnbroking Act.

The bill amends the Florida Pawnbroking Act (act) to prohibit local governments, counties or municipalities, from enacting ordinances requiring the payment of any fee related to a pawn transaction or purchase unless authorized in current law.

The bill will reduce the revenues of Miami and Fort Lauderdale.

This bill may be a mandate requiring a two-thirds vote of each house.

The bill provides an effective date of July 1, 2006.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Provide limited government – The bill limits the types of ordinances that local governments can enact regarding pawnbroking.

Ensure lower taxes – The bill prohibits local government ordinances requiring fees or taxes that are not explicitly authorized in the Florida Pawnbroking Act.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Background**

The Florida Legislature created Chapter 539, F.S., in 1996 to outline the provisions of the Florida Pawnbroking Act (act). The act provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services and regulation by the local sheriffs or police department.

Pawnbrokers are stringently regulated and as such are required to keep records of all transactions. As outlined under s. 539.001(9), F.S., pawnbrokers are required to maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for one year after the date of transaction. Also, on or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day.

Pawnbrokers are subject to any applicable local occupational license taxes and are obligated to collect and remit sales taxes including any local discretionary sales taxes on sales transactions.

##### Transaction Fee Ordinance

Both Miami (in 1996) and Fort Lauderdale (in 2004) have enacted local ordinances assessing a transaction fee of \$1.50 on every pawn loan and purchase in those municipalities. The charge was imposed to cover the cost of police inspections and the processing of transaction forms.

Following adoption of the ordinance, some pawnbrokers in Miami sued the city, and the trial court declared the city's pawnshop fees unconstitutional, finding them to be a tax, and not, as contended by the city, user fees. The third district court of appeals reversed this decision reaffirming that a fee imposed by the city to cover the cost of law enforcement services to pawn shops is a valid user fee and not an unconstitutional tax.<sup>1</sup>

A pawn transaction fee ordinance was recently proposed in the city of Ocala. The city, however, did not enact the ordinance.

Current law does not explicitly prohibit the enactment of an ordinance imposing a fee on pawnbroker transactions, it only requires that any ordinances enacted be in compliance with the Florida Pawnbroking Act.

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<sup>1</sup> City of Miami v. Quik Cash Jewelry and Pawn Inc., 811 So.2d 756 (FL 3 DCA 2002)

## **Effect of Bill**

The bill prohibits counties and municipalities from enacting local ordinances requiring the payment of any fee related to a pawn transaction or purchase unless explicitly authorized under the Florida Pawnbroking Act.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 539.001, F.S., relating to the Florida Pawnbroking Act, restricting the authority of counties and municipalities to enforce a fee or tax.

Section 2. Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The revenues of the cities of Miami and Ft. Lauderdale will be reduced.

#### **2. Expenditures:**

None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

### **D. FISCAL COMMENTS:**

For local FY 2004-2005, the City of Fort Lauderdale reported having charged \$82,446 in transaction fees and has received \$52,824 in transaction fee payments. Miami did not respond to the survey.<sup>2</sup>

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The mandates provision appears to apply because this bill reduces the revenue raising authority of cities and counties. While only two cities currently levy this fee, all cities and counties have authority to levy this fee. Therefore, this authority appears to be significant. No mandate exemptions apply. Therefore, the bill may be a mandate requiring a two-thirds vote majority of each house.

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<sup>2</sup> Survey conducted by Legislative Committee on Intergovernmental Relations

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 22, 2006, the Committee on Agriculture adopted one amendment to the bill. The amendment clarified that local ordinances are not permitted to require payment of any fee or tax related to any pawn transaction including purchases.

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CHAMBER ACTION

The Agriculture Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to pawnbroking; amending s. 539.001, F.S.;  
providing that local ordinances shall not require the  
payment of any fee or tax related to a pawn transaction or  
purchase unless authorized under the Florida Pawnbroking  
Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (20) of section 539.001, Florida  
Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.--

(20) CONFLICTING ORDINANCES.--Any county or municipality  
may enact ordinances that are in compliance with, but not more  
restrictive than this section, except that local ordinances  
shall may not require the payment of any fee or tax related to a  
pawn transaction or purchase unless authorized under this  
chapter or restrict hours of operations other than between

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24 | midnight and 6 a.m. Any ordinance that conflicts with this  
25 | subsection is void. ~~Nothing in~~ This section does not ~~shall~~  
26 | affect the authority of a county or municipality to establish  
27 | land use controls or require a pawnbroker to obtain a local  
28 | occupational license.

29 |       Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1039      Miami-Dade County Lake Belt Area  
**SPONSOR(S):** Garcia and others  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water &amp; Natural Resources Committee</u>	<u>8 Y, 0 N</u>	<u>Winker</u>	<u>Lotspeich</u>
2) <u>Finance &amp; Tax Committee</u>	<u></u>	<u>Monroe</u> <i>KDSM</i>	<u>Diez-Arguelles</u> <i>[Signature]</i>
3) <u>Agriculture &amp; Environment Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning October 1, 2006, 18 cents per ton beginning October 1, 2007, and 24 cents per ton beginning October 1, 2008.
- Revises the date from January 1, 2001 to October 1, 2009 on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds of the mitigation fee.

The bill will have a positive fiscal impact on the revenue deposited into the Lake Belt Mitigation Trust Fund from approximately \$3 million in 2005 to \$10 million in 2009, due to three annual increases in the mitigation fee.

The bill will take effect October 1, 2006.



## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Ensure lower taxes – The bill increases the mitigation fee for the mining industry in the Lake Belt Area.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Present Situation**

The Miami-Dade Lake Belt Area comprises 77.5 square miles of environmentally sensitive land located in the western edge of the Miami-Dade County urban area. This area consists of wetlands and lakes which act potentially as a buffer between the Everglades and the encroachment of urban development. The area is also used for mining limestone and sand, with rock mined from the area supplying about one-half of all the limestone used in Florida. The Northwest Wellfield, which is located at the eastern edge of the area, is the largest drinking water wellfield in the state and supplies about 40 percent of the potable drinking water for Miami-Dade County. About 50% of the land within the Lake Area is owned by the mining industry, 25% is owned by government agencies, and 25% is owned by non-mining private owners.

Section 373.4139, F.S., established the Lake Belt Committee for the purpose of developing a long-term plan for the Lake Belt Area. In February 1997 and February 2001, this committee submitted reports to the Legislature with findings, recommendations, and a plan for the Lake Belt Area.

Based on these findings and recommendations, s. 373.4149, F.S., was enacted which adopted the plan intended to enhance the water supply for Miami-Dade County and the Everglades, including the development of wellfield protection measures, while maximizing the efficient recovery of limestone, promoting the social and economic welfare of the community, and protecting the environment.

A major recommendation from the Lake Belt Committee was that in order to offset the impacts of rock mining in the Lake Belt Area, this activity needed to be offset by the implementation of a mitigation plan.

Section 373.41492, F.S., enacted the mitigation plan by requiring the assessment of a per-ton mitigation fee assessed on limestone and sand sold from the Lake Belt Area. Fees collected from such sales are to be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes.

Section 373.41492(2), F.S., provides that, effective October 1, 1999, 5 cents for each ton of limerock and sand sold from within the Lake Belt Area will be assessed. The limerock or sand miner who sells the limerock or sand is required to collect the mitigation fee and send the fee to the Department of Revenue (DOR). Proceeds of the fee, less administrative costs for the DOR, are then transferred to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund created under s. 373.41495, F.S.

Section 373.41492(5), F.S., provides that effective January 1, 2001, and each January 1 thereafter, the per-ton mitigation fee must be increased by 2.1 percentage points, plus a cost growth index. Based upon this rate schedule, the mitigation fee for 2005 was 7 cents per ton.

All proceeds from the mitigation fee are to be used for mitigation activities that offset the loss of the value and functions of wetlands as a result of mining activities in the Lake Belt Area. Mitigation activities include the following:

- The purchase, enhancement, restoration, and management of wetlands and uplands.
- The purchase of mitigation credit from a permitted mitigation bank pursuant to s. 373.4136, F.S.
- Structural modifications to the existing drainage system to enhance the hydrology of the Lake Belt Area.
- Reimbursement to other funding sources, including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund, for the purchase of lands acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land for mitigation due to rock mining.

Section 373.41492(6)(b), F.S., creates a Lake Belt Area mitigation fee interagency committee consisting of representatives from the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. A representative of the limerock mining industry is a non-voting member of the committee. The interagency committee is required to submit a report to the Legislature with recommendations for any needed adjustments to the mitigation fee (s. 373.41492(8), F.S.).

### **Effect of Proposed Changes**

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning October 1, 2006, 18 cents per ton beginning October 1, 2007, and 24 cents per ton beginning October 1, 2008.
- Revises the date from January 1, 2001 to October 1, 2009 on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds from the mitigation fee.

The bill will take effect October 1, 2006.

#### **C. SECTION DIRECTORY:**

Section 1: Amends s. 373.4149, F.S., changes the boundaries of the Lake Belt Area.

Section 2: Amends s. 373.41492, F.S., increases the mitigation fee for each ton of limerock and sand sold in the Lake Belt Area.

Section 3: The bill takes effect on October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

According to the South Florida Water Management District, approximately \$3 million in fee revenues from about 43 million tons of limerock and sand mined were deposited into the Lake Belt Mitigation Trust Fund in 2005.

Under the new mitigation fee rates provided for in the bill, an estimated \$5.2 million in fee revenues would be deposited in the trust fund at the 12 cents level (effective October 1, 2006); \$7.8 million effective October 1, 2007, and \$10.3 million effective October 1, 2008. Effective October 1, 2009 and each October 1 thereafter, the mitigation fee will increase by 2.1%, plus a cost growth index which will further increase the fee revenues deposited in the trust fund.

These increases in the mitigation fees should increase revenues to local governments for mitigation activities expenses.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The increased mitigation fees will have a negative fiscal impact upon the mining industry in the Lake Belt Area.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that counties and municipalities have to raise revenue.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

In their analysis of this bill, the Department of Revenue writes:

The . . . requirement to calculate the adjustments to the mitigation fee based upon specific indexes from the United States Department of Labor for the 12 month period ending September 30 of each year and an adjusted mitigation fee effective October 1 of the same

year can not be done. Indexes such as the Consumer Price Index are published as much as three or more months following the reported month. Index information for September of a given year is not available until sometime in December of that year, at the earliest.

The Department goes on to recommend that the rate changes be made effective on January 1, three months later than the bill currently has the rate changes occurring. For similar reasons, the Department also asks for the bills effective date to be moved to January 1, 2007

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

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A bill to be entitled

An act relating to the Miami-Dade County Lake Belt Area; amending s. 373.4149, F.S.; revising the geographic boundaries of the Miami-Dade County Lake Belt Area; amending s. 373.41492, F.S.; revising the geographic boundaries for mining areas subject to mitigation fees under the Miami-Dade County Lake Belt Mitigation Plan; providing for mitigation fee increases; authorizing proceeds of mitigation fees to be allocated to the South Florida Water Management District and Miami-Dade County for specific purposes; revising the reporting requirements for the interagency committee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.--

(3) The Miami-Dade County Lake Belt Area is that area bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west and Tamiami Trail to the south together with the land south of Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54 South, Range 39 East, sections 24, 25, and 36, Township 54 South, Range 38 East, less those portions of section 3, Township 52 South, Range 39 East south of Krome Avenue and west of U.S. Highway 27, section 10, except the west one half, section 11,

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~~except the northeast one quarter and the east one half of the northwest one quarter, and tracts 38 through 41, and tracts 49 through 64 inclusive, section 13, except tracts 17 through 35 and tracts 46 through 48, of Florida Fruit Lands Company Subdivision No. 1 according to the plat thereof as recorded in plat book 2, page 17, public records of Miami Dade County, and section 14, except the west three quarters, Township 52 South, Range 39 East, lying north of the Miami Canal, and less sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East and Government Lots 1 and 2, lying between Townships 53 and 54 South, Range 39 East and those portions of sections 1 and 2, Township 54 South, Range 39 East, lying north of Tamiami Trail.~~

Section 2. Subsections (2), (5), and (7), paragraph (a) of subsection (6), and paragraph (b) of subsection (9) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.--

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area ~~and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and the east one-half of sections 24 and, 25 and all of sections, 35, and 36, Township 53 South, Range 39 East.~~ The mitigation fee is imposed ~~at the~~

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rate of 5 cents for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 12 cents per ton beginning October 1, 2006, 18 cents per ton beginning October 1, 2007, and 24 cents per ton beginning October 1, 2008. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fee. The amount of the mitigation fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the mitigation fee applies. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and forward the proceeds of the fee to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs.

(5) Beginning October 1, 2009 ~~January 1, 2001~~, and each October 1 ~~January 1~~ thereafter, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States

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Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6) (a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, and the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that



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exchanged land under s. 373.4149 for mitigation due to rock  
mining ~~rockmining~~.

(7) Payment of the fee imposed by this section satisfies the mitigation requirements imposed under ss. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rock mining ~~rockmining~~ supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfy all federal mitigation requirements for the wetlands mined.

(9)

(b) No sooner than January 31, 2010, and no more frequently than every 5 ~~10~~ years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

Section 3. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1039

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Finance & Tax Committee  
2 Representative(s) Garcia offered the following:

3  
4 **Amendment**

5 Remove line(s) 63-77 and insert:

6  
7 beginning January 1, 2007, 18 cents per ton beginning January 1,  
8 2008, and 24 cents per ton beginning January 1, 2009. Any  
9 limerock or sand that is used within the mine from which the  
10 limerock or sand is extracted is exempt from the fee. The  
11 amount of the mitigation fee imposed under this section must be  
12 stated separately on the invoice provided to the purchaser of  
13 the limerock or sand product from the limerock or sand miner, or  
14 its subsidiary or affiliate, for which the mitigation fee  
15 applies. The limerock or sand miner, or its subsidiary or  
16 affiliate, who sells the limerock or sand product shall collect  
17 the mitigation fee and forward the proceeds of the fee to the  
18 Department of Revenue on or before the 20<sup>th</sup> day of the month  
19 following the calendar month in which the sale occurs.

20 (5) Beginning January 1, 2010 ~~2001~~, and each January 1  
21 thereafter, the per-ton mitigation fee shall

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. 1039

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Finance & Tax Committee  
2 Representative(s) Garcia offered the following:

3  
4 **Amendment**

5 Remove line(s) 129 and insert:

6  
7 Section 3. This act shall take effect January 1, 2007.  
8

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## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1189

Pasco County

**SPONSOR(S):** Legg

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee		Monroe <i>LDJ</i>	Diez-Arguelles <i>LDJ</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill provides that the resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant by the board to decrease the capital local school property tax levied pursuant to s. 1011.71(2), F.S., and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under s. 1011.71(2), F.S., at a millage rate in excess of the reduced millage rate promised in the resolution.

This bill also ratifies and confirms the referendum held in Pasco County in March 2004.

According to the Economic Impact Statement, this bill has no revenue impact but may ensure "lower bond insurance and (a) better bond rating for the voter approved sales tax increase".

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Ensure Lower Taxes - The bill allows the Pasco County School Board to include a covenant to decrease the capital local school property tax in a resolution providing for the receipt of Local Government Infrastructure Surtax revenues and to maintain the reduction as long as the surtax is in effect.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Current Situation**

Section 1011.71, F.S., authorizes each school board to levy, without a referendum, not more than 2 mills against the taxable value for school purposes to fund a variety of facilities and services for school purposes, including new facility construction, maintenance of facilities, acquisition of equipment, payment of certain student transportation expenses.

School districts may also derive capital funding from the Local Government Infrastructure Surtax (surtax) levied by a county pursuant to s. 212.055(2), F.S. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If approved at referendum, revenue from the surtax is distributed as determined in an interlocal agreement that is typically executed before the surtax is levied, and which may provide for distribution of surtax revenues to the school boards or municipalities within the county.

##### **Effect of Proposed Changes**

The resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant by the board to decrease the capital local school property tax levied pursuant to s. 1011.71(2), F.S., and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under s. 1011.71(2), F.S., at a millage rate in excess of the reduced millage rate promised in the resolution.

This bill also ratifies and confirms the referendum held in Pasco County in March 2004.

#### **C. SECTION DIRECTORY:**

- |            |  |
|------------|--|
| Section 1. | Authorizes covenants to limit the levy of capital local school property taxes.                       |
| Section 2. | Provides an effective date; ratifies and confirms the referendum held in Pasco County in March 2004. |

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 23, 2005.

WHERE? Pasco Times, Port Richey, Pasco County, Florida

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

## III. COMMENTS

- A. CONSTITUTIONAL ISSUES: This bill ratifies and confirms the referendum held in March 2004 in Pasco County. Under Florida law, legislative bodies may retroactively enact curative laws to ratify, validate, and confirm any act that they could have authorized in the first place, assuming that no constitutional objection exists at the time of the ratification.<sup>1</sup> The subject of the March 2004 referendum is not specified in the bill, and it is unknown whether any constitutional issues exist with respect to the March 2004 referendum.
- B. RULE-MAKING AUTHORITY: This bill does not address rule-making authority.
- C. DRAFTING ISSUES OR OTHER COMMENTS: The Economic Impact Statement submitted for this bill indicates that the bill will result in a \$14 million increase in revenues; however, this is not an accurate reflection of the actual impact of the bill. The bill will not have a direct fiscal impact on revenues of the school district.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

<sup>1</sup> *Davis v. City of Clearwater*, 104 Fla. 42 (Fla. 1932); *Dover Drainage Dist. v. Pancoast*, 102 Fla. 267 (Fla. 1931); *Utley v. City of St. Petersburg*, 106 Fla. 692 (Fla. 1932).

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A bill to be entitled

An act relating to Pasco County; providing that a resolution of the District School Board of Pasco County which provides for receipt of proceeds from the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant to limit the levy of capital local school property taxes; ratifying and confirming a referendum; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Resolution regarding local government infrastructure surtax for the Pasco County School District.--The resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under section 212.055(2), Florida Statutes, may include a covenant by the board to decrease the capital local school property tax levied pursuant to section 1011.71(2), Florida Statutes, and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under section 1011.71(2), Florida Statutes, at a millage rate in excess of the reduced millage rate promised in the resolution.

Section 2. This act shall take effect upon becoming a law but shall ratify and confirm the referendum held in Pasco County in March 2004.





## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1203

St. Johns Water Control District, Indian River County

**SPONSOR(S):** Poppell

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Smith	Hamby
2) Finance & Tax Committee		Monroe <i>KDSM</i>	Diez-Arguelles <i>[Signature]</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The St. Johns Water Control District (District) is an independent district located in Indian River County. The District was created in 1962 through circuit court decree and derives its statutory authority from s. 298, F.S. The District imposes maintenance taxes and has the power to issue bonds.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill deletes outdated language and organizes previously authorized powers of the District. The bill also makes minor, stylistic changes to some of the language of the charter.

The bill deletes specified provisions relating to the District board and officers and general and special powers of the District. The bill provides for the District's powers and authority to be in accordance with chapter 298, F.S.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1203b.FT.doc

**DATE:** 3/28/2006

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

This bill does not appear to implicate any of the House Principles.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (including local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

##### St. Johns Water Control District

The St. Johns Water Control District (District) is an independent district located in Indian River County. The District was created in 1962 through circuit court decree and derives its statutory authority from ch. 298, F.S. The District imposes maintenance taxes and has the power to issue bonds.

##### Changes to the St. Johns Water Control District Charter

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill deletes outdated language and organizes previously authorized powers of the District. The bill also makes minor, stylistic changes to some of the language of the charter.

The bill deletes specified provisions relating to the District board and officers and general and special powers of the District. The bill provides for the District's powers and authority to be in accordance with chapter 298, F.S.

#### Charter of District

This bill recreates and reenacts the District's charter as follows:

- Section 1: Provides for boundaries of the District.<sup>1</sup>
- Section 2: Declares the provisions of s. 298, F.S., to be applicable to the District.<sup>2</sup>
- Section 3: Provides for taxes to be levied and apportioned as provided by s. 298, F.S., and to be collected during each year at the same time that county taxes are due and collected in Indian River County.<sup>3</sup>
- Section 4: Provides for apportionment of maintenance tax pursuant to s. 298.54, F.S.<sup>4</sup>
- Section 5: Provides for collection and enforcement of all taxes levied to coincide with collection of county taxes.<sup>5</sup>
- Section 6: Provides for taxes to become delinquent in the same manner as county taxes.<sup>6</sup>
- Section 7: Provides for the salaries and services of the County Property Appraiser and the County Tax Collector.<sup>7</sup>
- Section 8: Provides for tax liens.<sup>8</sup>
- Section 9: Authorizes the Board of Supervisors to issue bonds pursuant to s. 298, F.S.<sup>9</sup>
- Section 10: Authorizes the issuance of warrants, negotiable notes, or other evidences of indebtedness.<sup>10</sup>
- Section 11: Excludes the District from the application of bond provisions in s. 298.73, F.S.<sup>11</sup>
- Section 12: Provides for the powers and duties of the Board of Supervisors regarding bond issuance.<sup>12</sup>
- Section 13: Provides for the powers and duties of the Board of Supervisors regarding the payment of expenses and recurring services and costs from maintenance taxes.<sup>13</sup>

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<sup>1</sup> See ch. 65-812, L.O.F. § 1, ch. 69-1162, L.O.F. § 1.

<sup>2</sup> See ch. 65-812, L.O.F. § 2.

<sup>3</sup> See ch. 65-812, L.O.F. § 3.

<sup>4</sup> See ch. 65-812, L.O.F. § 4.

<sup>5</sup> See ch. 65-812, L.O.F. § 5.

<sup>6</sup> See ch. 65-812, L.O.F. § 6.

<sup>7</sup> See ch. 65-812, L.O.F. § 7.

<sup>8</sup> See ch. 65-812, L.O.F. § 8.

<sup>9</sup> See *generally* ch. 65-812, L.O.F. §§ 13 and 14.

<sup>10</sup> See ch. 65-812, L.O.F. § 10.

<sup>11</sup> See ch. 65-812, L.O.F. § 12.

<sup>12</sup> See ch. 65-812, L.O.F. § 13.

<sup>13</sup> See ch. 65-812, L.O.F. § 14.

- Section 14: Grants the District the right to protect against surface waters.<sup>14</sup>
- Section 15: Provides for compensation of the Board of Supervisors.<sup>15</sup>
- Section 16: Prohibits any person, firm, or corporation from connecting or maintaining a connection of any farm ditch with any of the canals, ditches, laterals, or waterways, constructed, controlled, or maintained by the District; provides penalty.
- Section 17: Authorizes the District to construct, install, and maintain locks, dams, and other works and facilities in the canals, ditches, and drains within the District.
- Section 18: Authorizes the District to grant permits allowing any access over, under, or across its lands.
- Section 19: Provides severability.

**C. SECTION DIRECTORY:**

- Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; provides legislative intent.
- Section 2: Codifies, reenacts, amends and repeals chapters 65-812 and 69-1162, L.O.F.
- Section 3: Recreates and reenacts the charter of the District.
- Section 4: Repeals chapters 65-812 and 69-1162, L.O.F.
- Section 5: Provides an effective date of upon becoming law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, Vero Beach, Indian River County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

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<sup>14</sup> See ch. 65-812, L.O.F. § 15.

<sup>15</sup> See ch. 65-812, L.O.F. § 16.

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

As a part of this codification, section 7 of the charter is being amended to replace the outdated term "tax assessor" with the term "property appraiser". Due to a scrivener's error the term "property appraiser" does not appear in two locations in section 7 where the term "tax assessor" was removed.

HB 1423 (2005 Legislative Session), relating to the St. Johns Water Control District, Indian River County, was vetoed by the Governor on June 20, 2005. According to the veto letter, the bill expanded the district's powers by allowing the district to levy fines against those who pollute the district's canals and those who violate Florida law, the federal Clean Water Act, and the federal National Pollutant Discharge Elimination System.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

1                                   A bill to be entitled

2       An act relating to the St. Johns Water Control District,  
3       Indian River County; codifying, amending, and reenacting  
4       special acts relating to the district; fixing and  
5       prescribing boundaries of said district; making the  
6       provisions of chapter 298, F.S., applicable thereto;  
7       providing for the levy, collection, and enforcement of  
8       installment and maintenance taxes by said district at the  
9       same time and in like manner as county taxes; providing  
10      that said taxes shall be extended by the county on the  
11      county tax roll and shall be collected by the tax  
12      collector in the same manner and time as county taxes;  
13      providing for the same discounts and penalties as county  
14      taxes; providing for the compensation of the county and  
15      tax collector; providing that district taxes shall be a  
16      lien on lands against which taxes are levied of equal  
17      dignity with county and other taxes; providing that the  
18      approval of the board of drainage commissioners is not  
19      required to issue bonds; providing for floating  
20      indebtedness of the district; providing that payment of  
21      taxes in advance is not authorized; providing that use of  
22      bonds and interest coupons in payment of taxes is not  
23      authorized; providing that the board may enter into  
24      certain covenants and agreements with holders of bonds;  
25      providing that water is a common enemy; providing for  
26      compensation of the board of supervisors; providing  
27      additional powers of the board; providing for severability  
28      of the provisions of the act; repealing chapters 65-812

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and 69-1162, Laws of Florida, relating to the district;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The reenactment of existing law in this act shall not be construed as a grant of additional authority to nor to supersede the authority of any entity pursuant to law. Exceptions to law contained in any special act that are reenacted pursuant to this act shall continue to apply.

(2) The reenactment of existing law in this act shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of the district with respect to bonded indebtedness. Nothing pertaining to the reenactment of existing law in this act shall be construed to affect the ability of the district to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing bonded indebtedness of the district.

Section 2. Chapters 65-812 and 69-1162, Laws of Florida, are codified, reenacted, amended, and repealed as provided in this act.

Section 3. The St. Johns Water Control District is re-created, and the charter for such district is re-created and reenacted to read:

Section 1. The decree of the Circuit Court in and for the Ninth Judicial Circuit, Indian River County, Florida, entered in Case No. 5736 on May 14, 1962, creating and incorporating the St. Johns Water Control District, an independent special



57 district, under chapter 298, Florida Statutes, and the decree of  
58 said court revising and correcting the boundaries of the  
59 district entered on October 25, 1963, and an order correcting a  
60 clerical error in the decree revising and correcting the  
61 boundaries of the district on December 27, 1963, and all  
62 subsequent proceedings taken in said circuit court concerning  
63 said district are hereby ratified, confirmed, and approved,  
64 including its territorial boundaries as follows:

65  
66 From the center of Section 5, township 33 South, Range  
67 38 East, run West along the centerline of Highway 60  
68 through Sections 5 and 6, and in Township 33 South,  
69 Range 37 East continue west along the centerline of  
70 State Highway 60 through Sections 1, 2, 3, 4, 5 and 6  
71 to the West boundary of Section 6; thence South along  
72 the West boundary of Sections 6, 7, 18 and 19 to the  
73 Southwest corner of Section 19; thence East along the  
74 south boundary of Section 19 to the Southeast corner  
75 of said Section 19; thence South along the West  
76 boundary of Sections 29 and 32 to the Southwest corner  
77 of Section 32; thence Easterly along the South  
78 boundary of Sections 32, 33, 34, 35 and 36 to the  
79 Southeast corner of Section 36, all lying in Township  
80 33 South, Range 37 East; thence in Township 33 South,  
81 Range 38 East, run Easterly along the South boundary  
82 of Sections 31 and 32 to the Southeast corner of  
83 Section 32; thence run North to the Northeast corner  
84 of Section 29, Township 33 South, Range 38 East;

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85        thence run Easterly to the Southeast corner of Section  
 86        21, Township 33 South, Range 38 East; thence Northerly  
 87        along the East boundaries of Sections 21 and 16 to the  
 88        Northeast corner of the Southeast one-quarter (SE 1/4)  
 89        of Section 16, Township 33 South, Range 38 East;  
 90        thence Westerly to the center of Section 16; thence  
 91        Northerly to the Northeast corner of the Northwest  
 92        one-quarter (NW 1/4) of Section 16; thence Westerly to  
 93        the Southeast corner of Section 8; thence North to the  
 94        Northeast corner of Section 8; thence Westerly to the  
 95        Southeast corner of the Southwest one-quarter (SW 1/4)  
 96        of Section 5; thence North to the center of Section 5  
 97        and the point of beginning. Including 27,743.40  
 98        acres.

100        Section 2. The provisions of the general drainage laws of  
 101        Florida applicable to drainage districts or subdrainage  
 102        districts which are embodied in chapter 298, Florida Statutes,  
 103        and all of the laws amendatory thereof, now existing or  
 104        hereafter enacted, so far as not inconsistent with this act, are  
 105        hereby declared to be applicable to said St. Johns Water Control  
 106        District.

107        Section 3. Taxes shall be levied and apportioned as  
 108        provided for in the general drainage laws of Florida (chapter  
 109        298, Florida Statutes, and amendments thereto), except as  
 110        otherwise provided herein. The board of supervisors shall  
 111        determine, order, and levy the amount of the annual installments  
 112        of the total taxes levied under sections 298.50 and 298.54,

113 Florida Statutes, which shall become due and be collected during  
114 each year at the same time that county taxes are due and  
115 collected, which said annual installment and levy shall be  
116 evidenced to and certified by the said board not later than  
117 August 1 of each year, to Indian River County. Said tax shall be  
118 extended by the county on the county tax roll and shall be  
119 collected by the tax collector in the same manner and time as  
120 county taxes, and the proceeds thereof paid to said district.  
121 Said tax shall be a lien until paid on the property against  
122 which assessed, and enforceable in like manner as county taxes.

123 Section 4. Maintenance taxes as provided for under section  
124 298.54, Florida Statutes, shall be apportioned upon the basis of  
125 the net assessments of benefits assessed as accruing for  
126 original construction, and shall be evidenced to and certified  
127 by the board of supervisors not later than August 31 of each  
128 year, to Indian River County, and shall be extended by the  
129 county on the county tax roll and shall be collected by the tax  
130 collector in the same manner and time as county taxes and the  
131 proceeds therefrom paid to said district. Said tax shall be a  
132 lien until paid on the property against which assessed and  
133 enforceable in like manner as county taxes.

134 Section 5. The collection and enforcement of all taxes  
135 levied by said district shall be at the same time and in like  
136 manner as county taxes, and the provisions of the Florida  
137 Statutes relating to the sale of lands for unpaid and delinquent  
138 county taxes, the issuance, sale, and delivery of tax  
139 certificates for such unpaid and delinquent county taxes, the  
140 redemption thereof, the issuance to individuals of tax deeds

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141 based thereon, and all other procedures in connection therewith,  
142 shall be applicable to said district and the delinquent and  
143 unpaid taxes of said district to the same extent as if said  
144 statutory provisions were expressly set forth in this act. All  
145 taxes shall be subject to the same discounts as county taxes.  
146 All discounts allowed shall be a charge against the maintenance  
147 tax only.

148 Section 6. All taxes levied by the district shall be and  
149 become delinquent and bear penalties on the amount of said taxes  
150 in the same manner as county taxes.

151 Section 7. (1) Indian River County shall be paid annually  
152 an amount equal to 1 percent of the total taxes of the district  
153 and the Tax Collector of Indian River County shall be paid  
154 annually an amount equal to 1 percent of the total taxes of the  
155 district collected, for their respective services to the St.  
156 Johns Water Control District in said county for respectively  
157 assessing and collecting said drainage district taxes, provided,  
158 however, that the total amount to be paid to said county and  
159 said tax collector in any one year shall not exceed the sum of  
160 \$1,500 to each. All compensation paid the property appraiser and  
161 the tax collector shall be paid from the proceeds of the  
162 maintenance tax.

163 (2) The services of said county and said county tax  
164 collector in assessing and collecting said drainage district  
165 taxes are hereby declared to be special services performed  
166 directly for said district and the amounts paid therefor shall  
167 not be considered a part of the general income of their  
168 respective offices, nor shall it come under the provisions of

169 sections 116.03, 145.10, and 145.11, Florida Statutes. The  
170 personnel required to do said special work shall be paid for  
171 such special services by the county or the tax collector, as the  
172 case may be, from the receipts provided for such purpose.

173 Section 8. All drainage taxes levied by the district,  
174 together with all penalties for default in payment of the same  
175 and all costs in collecting the same, shall constitute a lien of  
176 equal dignity with the liens for county taxes, and other taxes  
177 of equal dignity with county taxes, upon all the lands against  
178 which said taxes shall be levied. A sale of any of the lands  
179 within the district for county or other taxes shall not operate  
180 to relieve or release the lands so sold from the lien for  
181 subsequent installments of district taxes, which lien may be  
182 enforced against such lands as though no such sale thereof had  
183 been made.

184 Section 9. The board of supervisors may issue bonds under  
185 the provisions of chapter 298, Florida Statutes, without the  
186 approval of the Board of Drainage Commissioners of the State of  
187 Florida, as provided for in section 298.47, Florida Statutes.

188 Section 10. (1) After the levy of maintenance taxes for  
189 any year, the board of supervisors may from time to time issue  
190 warrants or negotiable notes or other evidences of indebtedness  
191 of the district, which shall be payable solely from such  
192 maintenance taxes and shall not be issued in an amount greater  
193 than the amount of such maintenance taxes then unpaid less the  
194 amount of any of such notes then outstanding. All such notes  
195 shall mature not later than 1 year from the date of issuance  
196 thereof, shall bear interest at a rate or rates not exceeding 6

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percent per annum, and shall have such other details as shall be  
provided in the resolution or resolutions of the board of  
supervisors authorizing the issuance thereof.

(2) After the authorization of any bonds under the  
provisions of chapter 298, Florida Statutes, the board of  
supervisors may from time to time issue bond anticipation notes  
in anticipation of the issuance of such bonds, and the amount  
thereof shall not exceed the amount of bonds authorized and not  
issued. Such notes shall all mature not later than 1 year after  
the date thereof and may be renewed for a further period not  
exceeding 1 year, but all of such notes, including the renewals  
thereof, shall mature not later than 2 years from the date  
thereof. Such bond anticipation notes shall be paid from the  
proceeds of such bonds when issued, or from any taxes levied for  
the payment of such bonds which have been authorized, but in  
such case a like amount of the bonds authorized shall not be  
issued. The proceeds of any bond anticipation notes shall be  
used solely for the purposes provided in the resolution which  
authorized the issuance of the bonds in anticipation of which  
bond anticipation notes are issued.

Section 11. The provisions of section 298.73, Florida  
Statutes, and amendments and successors thereof, relating to the  
use of bonds and obligations in payment of drainage taxes, shall  
not be applicable to said district and its bonds, obligations,  
and taxes.

Section 12. The board of supervisors of the district shall  
have the power, in the resolution or other proceedings  
authorizing the issuance of any bonds, to enter into valid and

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legally binding covenants and agreements with the holders of  
such bonds as to the custody and security of the proceeds of  
said bonds, or of any bond anticipation notes issued in  
anticipation thereof, the custody and security of any debt  
service funds, including reserves, and the appointment of banks  
or trust companies as trustee to hold such construction funds  
and debt service and reserve funds, the rank or priority as  
between the bonds originally issued by the district, and any  
bonds thereafter issued and terms and conditions under which any  
bonds can be issued by the district after the original bonds or  
notes have been issued to finance the cost of the drainage  
improvements or works, and such other covenants and conditions  
as shall be deemed necessary and advisable by the board of  
supervisors in accordance with bond market practices and in  
order to better secure the payment of such bonds and the  
marketability thereof. All such covenants and agreements shall  
be and constitute valid and legally binding obligations of the  
district and the state does hereby covenant that it will not by  
any legislation hereafter in any manner repeal, modify, or  
impair the rights, remedies, and security of the holders of any  
bonds or other obligations issued by the district.

Section 13. The district shall also have power to covenant  
and agree with the holders of such bonds that all of the fees  
and expenses for the levy and collection of taxes in said  
district and of any trustees or other custodians of the bond  
proceeds or of the construction funds or debt service funds or  
reserves therefor, or the cost of the expenses of any annual  
audits or of any other annually recurring services or costs

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shall be paid from the maintenance taxes to be collected in each year with said district and not from the proceeds of any bonds or other obligations issued by said district.

Section 14. It is hereby declared that, in said district, surface waters, which shall include rainfall and the overflow of rivers and streams, are a common enemy, and the said district and any individual or agency holding a permit to do so from said district shall have the right to dike, dam, and construct levees to protect the said district or any part thereof, or the property of said individual or agency against the same, and thereby divert the course and flow of such surface water and or pump the water from within such dikes and levees.

Section 15. Each supervisor shall be paid for his or her services a per diem of \$25 for each day actually engaged in work pertaining to the said district; but the said supervisors shall not in any one month be paid more than \$100 each, except that in addition to the said per diem, they shall be paid 10 cents per mile for each mile actually traveled in going to and from their place of residence to the place of meeting.

Section 16. It shall be unlawful for any person, firm, or corporation to connect or to maintain a connection of any farm ditch with any of the canals, ditches, laterals, or waterways constructed, controlled, or maintained by St. Johns Water Control District in Indian River County, except in accordance with plans and specifications showing the method of such connection as prescribed by the board of supervisors of said district. Any violation of this act shall be punished as prescribed by the general law for punishment of misdemeanors.



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The board of supervisors shall also have the right and power to cause any such connection constructed or maintained in violation of this act to be blocked or stopped up.

Section 17. The Board of Supervisors of St. Johns Water Control District in Indian River County, in order to effect the drainage, reclamation, and protection of lands in said district, is hereby authorized to construct, install, and maintain locks, dams, and other works and facilities in the canals, ditches, and drains in said district and elsewhere.

Section 18. The St. Johns Water Control District is hereby authorized to grant such permits as it shall deem proper in allowing any access over, under, or across its lands.

Section 19. In case any one or more of the sections or provisions of this act or the application of such sections or provisions to any situation, circumstance, or person shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions to any other situation, circumstance, or person, and it is intended that this law shall be construed and applied as if such section or provision had not been included herein for any unconstitutional application.

Section 4. Chapters 65-812 and 69-1162, Laws of Florida, are repealed.

Section 5. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1203

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance & Tax Committee  
Representative(s) Poppell offered the following:

**Amendment**

Remove line(s) 151-158 and insert:

Section 7. (1) The property appraiser of Indian River county shall be paid annually an amount equal to 1 percent of the total taxes of the district and the tax collector of Indian River County shall be paid annually an amount equal to 1 percent of the total taxes of the district collected, for their respective services to the St. Johns Water Control District in said county for respectively assessing and collecting said drainage district taxes, provided, however, that the total amount to be paid to said property appraiser and

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## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1207

Indian River Mosquito Control District, Indian River County

**SPONSOR(S):** Poppell

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Smith	Hamby
2) Finance & Tax Committee		Monroe <i>KDSM</i>	Diez-Arguelles <i>[Signature]</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Indian River Mosquito Control District (District) was first established in 1925, with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 1947, the original enabling act, ch. 11128, L.O.F. (1925), was repealed, and a new law re-establishing the district and revising its authority was enacted.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority. The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- providing for a three member board of commissioners until the next election, stating three persons' names that will compose the commissioners until that time;
- clarifying charter provisions pertaining to terms in office for District Commissioners;
- amending provisions governing the compensation of District Commissioners; and
- updating language referring to the State of Florida's Comptroller; deleting Comptroller, adding Chief Financial Officer.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

The bill does not appear to implicate any of the House Principles.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (including local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

##### Indian River Mosquito Control District

The Indian River Mosquito Control District (District) was first established in 1925, with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 1947, the original enabling act, ch. 11128, L.O.F. (1925), was repealed, and a new law re-establishing the district and revising its authority was enacted.<sup>1</sup>

##### Changes to the Indian River Mosquito Control District Charter

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

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<sup>1</sup> Ch. 24600, L.O.F., (1947).

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- provides for a three member board of commissioners until the next election, states three names that will compose the commissioners until that time, naming: Janice Broda, David Foster, and Keith D. Hedin;
- clarifies charter provisions pertaining to terms in office; states that commissioners will be elected for 4 year terms and that the first commissioner is elected in a given general election by the highest number of votes and the remaining two commissioners are elected by the first and second highest number of votes cast at the next ensuing general election.
- amends provisions governing the compensation of District Commissioners; declares that commissioners will be paid for each day's service and for each mile traveled in going to and from the Board of Commissioners office according to per diem compensation expense and mileage rates established under general law or special act. Also declares that commissioners will be compensated for regular duties at the rate of \$400 per month;
- updates language referring to the State of Florida's Comptroller; deletes Comptroller, adds Chief Financial Officer; and
- adds a severability clause to the district charter.

#### Charter of the District

This bill recreates and reenacts the District's charter as follows:

- Section 1: Recreates the Indian River Mosquito Control District.
- Section 2: Provides for a District governing body to be called the Board of Commissioners (Board); the Board is to be composed of three members; establishes the powers of the Board; provides for four staggered terms.<sup>2</sup>
- Section 3: Requires all District Commissioners to provide a surety bond of \$5,000; failure to provide bond within 30 days of election will result in a vacancy on the Board. The Governor will then be allowed to appoint someone to that vacancy.<sup>3</sup>
- Section 4: Provides for a commission chair, vice chair, and secretary to be chosen at the first practical time after an election.<sup>4</sup>
- Section 5: Provides for compensation and payment for time traveled.
- Section 6: Grants the District authority to invest funds in interest-bearing depositories as prescribed by Florida law.<sup>5</sup>
- Section 7: Declares purpose of the District.<sup>6</sup>
- Section 8: Declares the general powers of the District.<sup>7</sup>

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<sup>2</sup> See generally ch. 24600, L.O.F., (1947) § 2, ch. 63-1433, L.O.F. § 1.

<sup>3</sup> See ch. 24600, L.O.F., (1947) § 3.

<sup>4</sup> See ch. 24600, L.O.F., (1947) § 4.

<sup>5</sup> See ch. 73-497, L.O.F. § 2.

<sup>6</sup> See ch. 24600, L.O.F., (1947) § 6.

<sup>7</sup> See ch. 24600, L.O.F., (1947) § 7.

- Section 9: Declares powers of the District as they pertain to purchasing.<sup>8</sup>
- Section 10: Authorizes the District to levy an ad valorem tax on all real and personal taxable property; provides provisions for the collection of those taxes through the county tax collector.<sup>9</sup>
- Section 11: Requires the Board to provide adequate insurance for property damage, bodily injury, or death.<sup>10</sup>
- Section 12: Provides the District abolishment provisions pursuant to s. 9, ch. 24600, 1947, L.O.F.<sup>11</sup>
- Section 13: Provides that willful damage to district projects, property, and work will be seen as a misdemeanor and can be punished as stated by general law.<sup>12</sup>
- Section 14: Authorizes the Board to provide life and health insurance to all District employees, including all Board members, the District Director, the families of said employees, and the families of the District Director and the Assistant District Director.<sup>13</sup>
- Section 15: Provides severability.

#### C. SECTION DIRECTORY:

- Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; provides legislative intent.
- Section 2: Codifies, reenacts, amends and repeals chapters 11128 (1925), 14381 (1929), 20114 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-1433, 73-497, 76-388, 78-531, and 91-337, L.O.F.
- Section 3: Recreates and reenacts the charter of the District.
- Section 4: Repeals chapters 11128 (1925), 14381 (1929), 20114 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-1433, 73-497, 76-388, 78-531, and 91-337, L.O.F.
- Section 5: Provides an effective date of July 1, 2006.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, Vero Beach, Indian River County, Florida.

<sup>8</sup> See ch. 61-2278, L.O.F. § 3, ch. 78-531, L.O.F. § 1, ch. 91-337, L.O.F. § 3.

<sup>9</sup> See ch. 24600, L.O.F., (1947) § 8.

<sup>10</sup> See ch. 61-2278, L.O.F. § 4.

<sup>11</sup> See ch. 24600, L.O.F., (1947) § 9.

<sup>12</sup> See ch. 24600, L.O.F., (1947) § 11.

<sup>13</sup> See ch. 61-2278, L.O.F. § 5, ch. 73-497, L.O.F. § 1.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As currently drafted, the bill names three individuals and states that they shall serve as commissioners until the next election. The bill then continues, stating that after the year 2000, "commissioners shall be elected". This language is obsolete and confusing and it is recommended that it be removed as a part of the codification.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.



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1                   A bill to be entitled

2       An act relating to Indian River Mosquito Control District,  
3       Indian River County; codifying, amending, reenacting, and  
4       repealing special acts relating to the district; fixing  
5       and prescribing the boundaries of said district; providing  
6       for the government and administration of the district;  
7       naming the commissioners thereof and providing for  
8       election of their successors; providing and defining the  
9       powers and purposes of such district and of the board of  
10      commissioners thereof; authorizing and empowering said  
11      board to construct and maintain canals, ditches, drains,  
12      and dikes and to fill depressions, lakes, ponds, or  
13      marshes in order to eliminate breeding places of  
14      mosquitoes and sandflies and to control and eradicate  
15      mosquitoes and sandflies; providing for spraying or  
16      otherwise disbursing substances and materials over the  
17      area of such district for the purpose of controlling and  
18      eradicating mosquitoes and sandflies and diseases  
19      transmitted by the same; authorizing said board to do any  
20      and all acts or things necessary for the control and  
21      complete elimination of mosquitoes and sandflies in said  
22      district; authorizing and providing for the levy and  
23      collection of taxes upon all the real and personal taxable  
24      property in said district for carrying out the purposes of  
25      this act; authorizing the borrowing by the board of  
26      commissioners of said district in any one tax year of a  
27      sum not to exceed 80 percent of the estimated taxes to be  
28      collected on behalf of said district within such year and

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29       to evidence the indebtedness represented by any money so  
30       borrowed by written obligation of the district and  
31       providing for the payment of interest thereon and for the  
32       repayment thereof prior to the borrowing of any further  
33       sums in any subsequent year; limiting the amount of taxes  
34       that may be so levied by said board upon the taxable  
35       property within such district; prohibiting injury to any  
36       works controlled under or in pursuance of this act, to be  
37       punishable as provided by general law; legalizing and  
38       validating the acts of the Indian River Mosquito Control  
39       District herewith abolished and making all contracts of  
40       said Indian River Mosquito Control District so abolished  
41       binding upon the new Indian River Mosquito Control  
42       District; authorizing and prescribing generally the powers  
43       and duties of the Board of Commissioners of said new  
44       Indian River Mosquito Control District; providing for  
45       severability; providing an effective date.

46  
47   Be It Enacted by the Legislature of the State of Florida:

48  
49       Section 1.   (1) The reenactment of existing law in this  
50       act shall not be construed as a grant of additional authority to  
51       nor to supersede the authority of the district pursuant to law.  
52       Exceptions to law contained in any special act that are  
53       reenacted pursuant to this act shall continue to apply.

54       (2) The reenactment of existing law in this act shall not  
55       be construed to modify, amend, or alter any covenants,  
56       contracts, or other obligations of the district with respect to

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57 bonded indebtedness. Nothing pertaining to the reenactment of  
58 existing law in this act shall be construed to affect the  
59 ability of the district to levy and collect taxes, assessments,  
60 fees, or charges for the purpose of redeeming or servicing  
61 bonded indebtedness of the district.

62       Section 2. Chapters 11128 (1925), 14381 (1929), 20114  
63 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-  
64 1433, 73-497, 76-388, 78-531, and 91-337, Laws of Florida, are  
65 codified, reenacted, amended, and repealed as provided in this  
66 act.

67       Section 3. The Indian River Mosquito Control District is  
68 re-created, and the charter for such district is re-created and  
69 reenacted to read:

70       Section 1. The Indian River Mosquito Control District is  
71 re-created, and the special taxing district now existing and  
72 known and designated as Indian River Mosquito Control District,  
73 as created and incorporated by chapter 11128 (1925), Laws of  
74 Florida, as amended, is hereby abolished, and a new special  
75 taxing district in Indian River County, to be known and  
76 designated as Indian River Mosquito Control District, is hereby  
77 created, established, and incorporated to succeed said former  
78 special taxing district known and designated as Indian River  
79 Mosquito Control District, and which new special taxing district  
80 hereby created and incorporated, to be known as Indian River  
81 Mosquito Control District, shall embrace and include all that  
82 territory and area situated and being in Indian River County,  
83 within the following territorial boundaries, to wit:

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All that part of Indian River County, Florida, lying  
East of the following described line:

Beginning at the South one-quarter corner of Section  
36, Township 33 South, Range 36 East, said point lying  
on the South Township line and the South boundary line  
of Indian River County, a political subdivision of the  
State of Florida; thence run North along the one-  
quarter Section lines of Sections 36 and 25, Township  
33 South, Range 36 East to the North line of Section  
25, Township 33 South, Range 36 East; thence run East  
along said North line of Section 25, Township 33  
South, Range 36 East to the Northeast corner of  
Section 25, said point lying on the Range line of  
Ranges 36 and 37; thence run North along the Range  
line to the intersection of the North right-of-way of  
State Road 60; thence run East along the said North  
right-of-way a distance of 732.15 feet to the East  
right-of-way of Lateral "S" Canal as shown on the plat  
of the Fellsmere Farms Company Subdivision of the  
Unsurveyed Township 32 South, Range 37 East, as  
recorded in Plat Book 2, Page 8, St. Lucie County  
Public Records; thence run North along said East  
right-of-way of Lateral "S" Canal to the intersection  
of the North boundary line of said Indian River County  
and the point of ending.

All of which lands hereinabove described and the owners thereof

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113 shall be entitled to all benefits and subject to all burdens and  
114 obligations as prescribed and set forth herein.

115 Section 2. The governing body of said Indian River  
116 Mosquito Control District shall be known and designated as the  
117 "Board of Commissioners of Indian River Mosquito Control  
118 District." Said governing body shall be composed of three  
119 members, and, until the next election, the following named  
120 persons shall be and are hereby designated to compose the Board  
121 of Commissioners of said Indian River Mosquito Control District:  
122 Janice Broda, David Foster, and Keith D. Hedin. Said governing  
123 body shall have all the powers of a body corporate, including  
124 the power to sue and be sued as a corporation in said name in  
125 any court; to contract; to adopt and use a common seal and alter  
126 the same at pleasure; to purchase, hold, lease, and convey such  
127 real estate and personal property as said board may deem proper  
128 to carry out the purposes of this act; to appoint a chief  
129 engineer, a consulting engineer, and an attorney for said board  
130 and such other agents and employees as said board may require;  
131 to borrow money and to issue negotiable promissory notes or  
132 bonds therefor; and to enable it to carry out the provisions of  
133 this act. The persons herein named and designated shall serve as  
134 commissioners of said Indian River Mosquito Control District  
135 until their successors are elected and qualified. After 2000,  
136 and in subsequent general elections, the commissioners shall be  
137 elected in a nonpartisan election for 4-year terms so that one  
138 commissioner is elected at one general election by the highest  
139 number of votes cast and two commissioners are elected by the  
140 first and second highest number of votes cast at the next

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ensuing general election.

Section 3. Each commissioner under this act, before he or she assumes office, shall be required to give to Indian River Mosquito Control District a good and sufficient surety bond in the sum of \$5,000, conditioned for the faithful performance of the duties of his or her office, said bond to be approved by and filed with the Clerk of the Circuit Court of Indian River County. Said bond shall also be recorded in the minutes of said Board of Commissioners of said Indian River Mosquito Control District. The failure of any person so elected as commissioner of Indian River Mosquito Control District within 30 days after his or her election to give bond shall create a vacancy as to such commissioner, and such vacancy shall be filled by the Governor appointing a person duly qualified to hold such office, which manner of filling such office shall obtain in the case of resignation, death, or removal from said district of any commissioner during his or her term of office. No person shall be qualified to hold office as a commissioner under this act unless such person shall be a duly qualified elector of said district.

Section 4. As soon as practicable after each general election, the commissioners of Indian River Mosquito Control District, after their qualification as such, shall meet and organize by the election, from among their number, of a chair, a vice chair, and a secretary. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business. The chair and vice chair shall vote at all meetings of the board.

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169        Section 5. The commissioners under this act shall be paid  
170 for each day's service and for each mile actually traveled in  
171 going to and from the office of the Board of Commissioners of  
172 Indian River Mosquito Control District according to per diem  
173 compensation expense and mileage rates established from time to  
174 time for officials and employees of the state. The per diem  
175 herein provided for shall apply to services rendered for  
176 inspection of work performed for the district or other services  
177 under this act. Additionally, commissioners shall be compensated  
178 for regular duties, as provided by general law or special act,  
179 at the rate of \$400 per month or such greater amount as may be  
180 permitted by general law or special act.

181        Section 6. The board is hereby authorized to invest its  
182 funds from time to time in interest-bearing depositories as  
183 prescribed by Florida law.

184        Section 7. Said board is hereby authorized and empowered  
185 to do any and all things necessary for the control and complete  
186 elimination of all species of mosquitoes and sandflies and  
187 diseases transmitted by the same in said district and, for this  
188 purpose, is hereby authorized and empowered to construct and  
189 thereafter to maintain canals, ditches, drains, and dikes; to  
190 fill in all depressions, lakes, and ponds or marshes that are  
191 the breeding places of mosquitoes and sandflies, insofar as said  
192 work does not interfere with the water supply of any city or  
193 community; and to employ engineers, scientists, helpers, and all  
194 other servants, agents, and employees as may be necessary for  
195 the purpose of controlling and eliminating all species of  
196 mosquitoes and sandflies in said district. Said board is hereby

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197 authorized and empowered to spray or otherwise disburse, or  
198 cause to be sprayed or otherwise disbursed, chemicals,  
199 substances, and materials of every nature upon and over the area  
200 of said district as shall be deemed necessary or desirable for  
201 the purpose of controlling and eliminating all species of  
202 mosquitoes and sandflies in said district and, for such  
203 purposes, may contract for and purchase such chemicals,  
204 substances, and materials and may contract for the spraying or  
205 disbursing thereof over the area of said district or may employ  
206 such agents, servants, and employees for such purpose as the  
207 commissioners of said district may deem necessary or advisable;  
208 to do any and all things that may be necessary from the  
209 standpoint of public health and comfort to control or eliminate  
210 mosquitoes and sandflies or their larvae in said district; and  
211 to promulgate such rules and regulations not inconsistent with  
212 the provisions of this act and with any of the laws of said  
213 state which, in their judgment, may be necessary for the proper  
214 carrying into effect and enforcement of this act.

215 Section 8. Said board shall have power and authority to  
216 hold, control, and acquire by gift or purchase such real or  
217 personal property, and to condemn such lands or easements, as  
218 may be necessary for the carrying out of any of the purposes of  
219 this act or for the material to be used for any of said purposes  
220 and for the preservation of the works constructed or to be  
221 constructed by said board under this act. Said board is  
222 authorized to exercise the right of eminent domain for the use  
223 of said district, in the manner prescribed by law, over such  
224 lands, easements, rights-of-way, riparian rights, and personal



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225 property that may be necessary for the purpose of said board in  
226 said construction, and the only prerequisite for the exercise of  
227 said power of eminent domain shall be the adoption by said board  
228 of a resolution specifying the property sought to be condemned  
229 and the purpose for which it is to be used. Said board is  
230 authorized to sell any real or personal property acquired or  
231 owned by it when the same shall be determined to be no longer  
232 useful to or suitable for the purposes of said board.

233 Section 9. Said board is hereby authorized and empowered  
234 to purchase goods, supplies, or material for the use of said  
235 district without the necessity of advertising any notice or  
236 calling for bids regarding said purchase when the amount to be  
237 paid therefor by said district does not exceed \$10,000 or when  
238 the goods, supplies, or materials to be purchased are obtainable  
239 from only one source or supplier.

240 Section 10. Said board is hereby authorized and empowered  
241 to levy upon all the real and personal taxable property in said  
242 district a special tax not exceeding 10 mills on the dollar for  
243 the year 1947 and for each and every year thereafter, to be used  
244 solely in carrying out the purposes of this act. Said levy shall  
245 be made not later than the 15th of July of each year by  
246 resolution of said board, or a majority thereof, duly entered at  
247 large upon its minutes. A certified copy of such resolution  
248 executed in the name of said board by its chair and secretary  
249 and under its corporate seals shall be delivered or transmitted  
250 to the Board of County Commissioners of Indian River County, and  
251 a copy shall be transmitted by mail to the Chief Financial  
252 Officer not later than August 1 of each year. It shall be the

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253 duty of the Board of County Commissioners of Indian River County  
254 to order the property appraiser of said county to assess and the  
255 collector of said county to collect the amount of said tax so  
256 assessed by the Board of Commissioners of said district upon all  
257 the taxable property, real or personal, in said district at the  
258 rate of taxation adopted by said board for said year, but not  
259 exceeding 10 mills on the dollar and as specified in said  
260 resolution, and said levy shall be included in the warrant to  
261 the tax collector and the property appraiser which is attached  
262 to the assessment roll of taxes for said county each year. The  
263 property appraiser shall make such assessment and the tax  
264 collector shall collect such taxes so levied in the manner as  
265 other taxes are assessed and collected and shall pay the same  
266 when collected, within the time and in the manner prescribed by  
267 law for the payment of other taxes, to the secretary of said  
268 Board of Commissioners. It shall be the duty of said Chief  
269 Financial Officer to assess and levy on all the railroad lines  
270 and railroad property, telegraph lines and telegraph property,  
271 and telephone lines and telephone property the amount of every  
272 such levy herewith provided in this section, and as in the case  
273 of other state and county taxes, and said taxes so levied by the  
274 Chief Financial Officer shall be collected as provided for other  
275 similar taxes, and the proceeds thereof shall be remitted to the  
276 secretary of said board in the same manner as such remittances  
277 are made in the collection of other taxes. If any such taxes so  
278 assessed are not paid, the said property shall be sold by said  
279 tax collector and certificates issued and tax deeds issued in  
280 the same manner and under the same laws relating to the sales,

281 issuance of certificates, and deeds with reference to all other  
282 state and county taxes. The Board of Commissioners of the Indian  
283 River Mosquito Control District is herewith authorized to borrow  
284 in any one tax year a sum not to exceed 80 percent of the  
285 estimated taxes to be collected on behalf of said district  
286 within such year and to evidence such loan made to said district  
287 by its tax anticipation note or notes bearing interest at a rate  
288 not to exceed 10 percent per annum, and which notes shall be  
289 payable at a time not greater than 1 year from the date of the  
290 borrowing of such moneys; the sums so borrowed shall be repaid  
291 out of the next taxes collected by said district to the extent  
292 necessary for the repayment thereof, together with such interest  
293 at a rate not to exceed 6 percent per annum; and no sums shall  
294 be borrowed as herewith provided in any subsequent year unless  
295 all moneys so borrowed in any preceding year shall have been  
296 entirely paid as to both principal and interest.

297 Section 11. Said board is hereby required to secure and  
298 keep in force in companies duly authorized to do business in  
299 Florida insurance covering liability for property damage or  
300 bodily injury or death resulting therefrom to all persons and  
301 property by reason of the ownership, maintenance, operation, or  
302 use of any vehicle, dragline, dredge, tractor, and related  
303 equipment being used for and in the interest of the purpose of  
304 said board in amounts not less than \$50,000 for bodily injury or  
305 death resulting therefrom to any one person, and not less than  
306 \$100,000 for bodily injury or death resulting therefrom for any  
307 one accident, and not less than \$25,000 for damage to property.

308 Section 12. The title to and jurisdiction over all

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309 property of Indian River Mosquito Control District herewith  
310 abolished, of every kind, nature, or description, is herewith  
311 transferred to and vested in the new Indian River Mosquito  
312 Control District herewith created. All lawful debts or  
313 obligations of the old Indian River Mosquito Control District  
314 herewith abolished are herewith made the debts and obligations  
315 of the new district herewith created, and all claims, demands,  
316 or credits held by said old district are herewith transferred to  
317 and made the claims, demands, and credits of said new district.  
318 No obligation or contract of said old district shall be impaired  
319 by this act, but rather all obligations or contracts of said old  
320 district are herewith made the obligations and contracts of the  
321 new district herewith created. All acts of the Board of  
322 Commissioners of the old Indian River Mosquito Control District  
323 herewith abolished and of the agents, servants, and employees of  
324 said Board of Commissioners of said old district and of said  
325 district are herewith ratified and confirmed.

326 Section 13. Whoever shall willfully damage any ditch,  
327 canal, drain, dike, or other work established or constructed  
328 under this act or who shall willfully interfere with or injure  
329 any property, work, or facility established or constructed under  
330 this act or who shall willfully interfere with the acts of any  
331 commissioner of said district or any person lawfully authorized  
332 or employed by the Board of Commissioners of this district in  
333 carrying out the provisions of this act commits a misdemeanor  
334 and, upon conviction thereof, shall be punished as provided by  
335 general law.

336 Section 14. (1) The Board of Commissioners of the Indian

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337 River Mosquito Control District is hereby authorized, empowered,  
338 and permitted to provide for life, health, accident, and  
339 hospitalization insurance, or an annuity insurance, or all or  
340 any of such insurance for employees of said district, for the  
341 director or assistant director, or for members of said board, or  
342 for the families of such employees, for the family of the  
343 director or assistant director, or for the families of the  
344 members of the board, and to that end to enter into agreements  
345 with insurance companies to provide such insurance. The election  
346 to exercise the authority granted by this act shall be evidenced  
347 by resolution duly recorded in the minutes of the Board of  
348 Commissioners of Indian River Mosquito Control District.

349 (2) The Board of Commissioners of Indian River Mosquito  
350 Control District is authorized to budget from and pay out of  
351 appropriate funds any portion of the cost of such insurance and  
352 to deduct from the wages of employees, the director and  
353 assistant director, and the members of the board who in writing  
354 make request for such insurance the balance of such cost and to  
355 pay or remit the same directly to the insurance company issuing  
356 such insurance.

357 (3) The participation in such insurance by any employee,  
358 director or assistant director, or member of said board shall be  
359 entirely voluntary at all times. Any enrolled member of such  
360 insurance plan may, upon any pay day, withdraw or retire from  
361 such plan upon giving the Board of Commissioners written notice  
362 thereof and directing the discontinuance of deductions from  
363 wages in payment of such premiums.

364 Section 15. In case any one or more of the sections or

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provisions of this act or the application of such sections or  
provisions to any situation, circumstance, or person shall for  
any reason be held to be unconstitutional, such  
unconstitutionality shall not affect any other sections or  
provisions to any other situation, circumstance, or person, and  
it is intended that this law shall be construed and applied as  
if such section or provision had not been included herein for  
any unconstitutional application.

Section 4. Chapters 11128 (1925), 14381 (1929), 20114  
(1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-  
1433, 73-497, 76-388, 78-531, and 91-337, Laws of Florida, are  
repealed.

Section 5. This act shall take effect July 1, 2006.

## Amendment No. (for drafter's use only)

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	

## Amendment

Remove line(s) 119 through 136 and insert:

members, and shall have all the powers of a body corporate,  
including the power to sue and be sued as a corporation in said  
name in any court; to contract; to adopt and use a common seal  
and alter the same at pleasure; to purchase, hold, lease, and  
convey such real estate and personal property as said board may  
deem proper to carry out the purposes of this act; to appoint a  
chief engineer, a consulting engineer, and an attorney for said  
board and such other agents and employees as said board may  
require; to borrow money and to issue negotiable promissory  
notes or bonds therefor; and to enable it to carry out the  
provisions of this act. The commissioners shall be

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1233 CS

Early Learning

**SPONSOR(S):** Ausley

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2376

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Committee	10 Y, 0 N, w/CS	Beagle	Mizereck
2) Finance & Tax Committee		Rice <i>ACR</i>	Diez-Arguelles <i>[Signature]</i>
3) Education Appropriations Committee			
4) Education Council			
5) _____			

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### SUMMARY ANALYSIS

This bill requires the Early Learning Advisory Council (ELAC), in conjunction with the Agency for Workforce Innovation, to contract for a study of early learning quality rating and incentive systems.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the administrative and operational structure of the Child Care Services Program Office of the Department of Children and Family Services.

The bill also requires OPPAGA, in cooperation with ELAC, to conduct a study of the effectiveness of the Child Care Executive Partnership Act.

Each study must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15, 2007

The bill takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

Section 411.01(4), F.S., requires the Agency for Workforce Innovation (AWI) to administer the state's early learning programs. AWI is responsible for maintaining and improving the quality of publicly funded early learning programs. Federal regulations governing the Child Care and Development Fund (CCDF) require that at least four percent of federal funding from CCDF be devoted to quality initiatives.<sup>1</sup> Florida currently spends \$24.2 million, constituting 5.4 percent of its CCDF funds, on quality initiatives.<sup>2</sup>

According to AWI, there is no state system in place that rates or provides incentives to providers based on higher quality services or performance. However, early learning service providers that meet certain national standards may earn a Gold Seal Quality Care designation pursuant to s. 402.281, F.S.

Section 409.178, F.S., the Child Care Executive Partnership Act, establishes the Child Care Executive Partnership Program. The Child Care Executive Partnership Program uses state and federal funds to match local funds derived from various sources, to create community based partnerships with employers and provide child care subsidies to low-income working parents. The Legislature is required to annually review the effectiveness of the program and reevaluate the percentage of additional state or federal funds, if any, that can be used for the program's expansion.

##### Effect of Proposed Changes:

This bill requires Early Learning Advisory Council (ELAC), in conjunction with AWI, to contract for a study of early learning quality rating and incentive systems in Florida and other states. The study must provide recommendations on:

- An early learning quality incentives and rating system with uniform standards and financial incentives for participating providers; and
- The establishment, cost and benefits of a quality incentive pilot program.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the administrative and operational structure of the Child Care Services Program Office of the Department of Children and Family Services (DCF). The study must include recommendations for the appropriate administrative and operational structures and state agency to regulate child care in Florida.

The bill also requires OPPAGA, in cooperation with ELAC, to conduct a study of the effectiveness of the Child Care Executive Partnership Act that includes a comparison of the funds expended and return on investment.

Each study with required recommendations must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15, 2007.

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<sup>1</sup> 45 C.F.R. § 98.51.

<sup>2</sup> Agency for Workforce Innovation, Legislative Bill Analysis for SB 2376.

**C. SECTION DIRECTORY:**

Section 1. Creates an unnumbered section of law requiring ELAC to contract for a study.

Section 2. Creates an unnumbered section of law requiring OPPAGA to study the Child Care Services Program Office of the DCF.

Section 3. Creates an unnumbered section of law requiring OPPAGA to study the effectiveness of the Child Care Executive Partnership Act.

Section 4. Provides that the bill is effective upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

AWI, ELAC, and OPPAGA will incur costs associated with conducting the required studies.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

The bill requires the Florida Early Learning Advisory Council, in conjunction with the Agency for Workforce Innovation to contract with one or more experts in the field of quality incentives and rating systems to conduct a study. This bill does not provide funding for this contract.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 21, 2006, the PreK-12 Committee adopted a strike-all amendment. This bill analysis reflects the bill as amended.

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CHAMBER ACTION

The PreK-12 Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to early learning; requiring a study by the Florida Early Learning Advisory Council, in conjunction with the Agency for Workforce Innovation, to examine early learning quality incentives and rating systems; establishing study requirements; requiring recommendations to the Governor and Legislature; requiring the Office of Program Policy Analysis and Government Accountability to study the administration and regulation of child care services; requiring recommendations to the Governor and Legislature; requiring the Office of Program Policy Analysis and Government Accountability, in cooperation with the Florida Early Learning Advisory Council, to study the effectiveness of the Child Care Executive Partnership Act; requiring recommendations to the Governor and Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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24       Section 1. Early learning quality incentives study.--

25       (1) The Florida Early Learning Advisory Council, in  
26 conjunction with the Agency for Workforce Innovation, shall  
27 contract with one or more nationally known experts on quality  
28 incentives and rating systems to conduct a study that includes  
29 the following:

30       (a) Examination of existing early learning quality  
31 incentives and rating systems in the state.

32       (b) Examination of early learning quality incentives and  
33 rating systems in other states, including, but not limited to,  
34 systems in North Carolina and Oklahoma.

35       (c) Recommendations for an early learning quality  
36 incentives and rating system that includes uniform standards,  
37 measures inputs and outputs, and provides financial incentives  
38 for participating providers.

39       (d) Recommendations on the establishment, cost, and  
40 benefits of an early learning quality incentives pilot program.

41       (2) The study shall seek input from representatives from  
42 each of the following categories:

43       (a) Large, medium, and small children's services councils  
44 with an appropriate mix from urban and rural counties.

45       (b) Large, medium, and small early learning coalitions  
46 with an appropriate mix from urban and rural counties.

47       (c) Early learning services providers.

48       (d) Private child care provider associations.

49       (e) Faith-based child care provider associations.

50       (f) Community colleges and state universities with a child  
51 care training component.

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52        (g) Parents who currently have children in an early  
53        learning program.

54        (3) The Florida Early Learning Advisory Council shall  
55        submit its recommendations to the Governor, the President of the  
56        Senate, and the Speaker of the House of Representatives by  
57        February 15, 2007.

58        Section 2. The Office of Program Policy Analysis and  
59        Government Accountability shall conduct a study of the  
60        administrative and operational structure of the Child Care  
61        Services Program Office of the Department of Children and Family  
62        Services that will include a review of all resources supporting  
63        the office as well as a review of child care services offices in  
64        other states. The findings of the study shall include a  
65        recommendation regarding the appropriate administrative and  
66        operational structures and the appropriate state agency to  
67        administer child care regulation functions. The study shall be  
68        submitted to the Governor, the President of the Senate, and the  
69        Speaker of the House of Representatives by February 15, 2007.

70        Section 3. The Office of Program Policy Analysis and  
71        Government Accountability, in cooperation with the Florida Early  
72        Learning Advisory Council, shall conduct a study of the  
73        effectiveness of the Child Care Executive Partnership Act, s.  
74        409.178, Florida Statutes, including, but not limited to, a  
75        comparison of the funds expended and the return on investment,  
76        and shall provide recommendations in a report to the Governor,  
77        the President of the Senate, and the Speaker of the House of  
78        Representatives by February 15, 2007.

79        Section 4. This act shall take effect upon becoming a law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1269

Local Occupational License Taxes

**SPONSOR(S):** Cusack

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2218

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Rice <i>ACR</i>	Diez-Arguelles <i>JW</i>
2) Local Government Council			
3) Fiscal Council			
4)			
5)			

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### SUMMARY ANALYSIS

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

This bill changes the name of the "Local Occupational License Tax Act" to the "Local Business Tax Act" and conforms the name change throughout ch. 205, F.S.

This bill takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the house principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 205, F.S., is the Local Occupational License Act. In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments have since been authorized to levy occupational license taxes according to the provisions of the Local Occupational License Act.

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

Licenses are sold by the tax collector beginning on August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year.

The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S.

##### Licensure Requirements

Section 205.194, F.S., prohibits local governments from issuing occupational licenses for professions regulated by the Department of Business and Professional Regulation (DBPR) without verifying that the person has satisfied DBPR requirements. Applicants are required to submit proof of registration, certification, or licensure issued by DBPR upon initial licensure in the jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their occupational license due to suspension, revocation, or inactivation of licensure, certification, or registration. DBPR currently regulates the following:

- certified public accountants and accounting businesses,
- alarm system contractors,
- asbestos consultants and contractors,
- athlete agents,
- auctioneers and their businesses,
- barbers and barber shops,
- building code administrators and inspectors,
- constructing contractors and constructing contracting businesses,
- community association managers,
- cosmetologists and cosmetology salons,
- electrical contractors,
- employee leasing,
- farm labor,
- geologists and geologist businesses,
- landscape architects and landscape architect businesses,
- pilots (harbor),
- surveyors and mappers and surveyor and mapper businesses,

- talent agencies, and
- veterinarians and veterinary establishments.

Section 205.023, F.S., prohibits the issuance of an occupational license to an applicant that does not provide proof of any applicable fictitious name registrations with the Division of Corporations in the Department of State.

Sections 205.1965, 205.1969, 205.1971, and 205.1973, F.S., require additional verification from pest control businesses, health studios and ballroom dance studios, businesses engaged in the selling of travel, and telemarketing businesses. These businesses must provide verification of licensure, registration, or exemption by the Department of Agriculture and Consumer Services before a local government may issue a local occupational license.

Section 205.196, F.S., requires pharmacies to produce a current permit from the Board of Pharmacy before a local government may issue a local occupational license.

Section 205.1965, F.S., requires that assisted living facilities must provide verification of licensure from the Agency for Health Care Administration before a local government may issue a local occupational license.

#### Other

Currently 368 of the 404 municipalities and 52 of the 67 counties in Florida have some sort of local occupational license tax in place.<sup>1</sup>

Although the local occupational license tax is meant to be purely revenue producing in nature, it has unintentionally become a measure of profession and business qualification to engage in a specified activity. This bill intends to rename the act to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.

#### **Proposed Changes**

This bill changes the name of the act from “Local Occupational License Tax Act” to “Local Business Tax Act” and conforms the name change throughout.

The bill also adds a definition for “certificate” to mean the document that is issued by the local governing authority which evidences that the person in whose name the document is issued has complied with the provisions of the Local Business Tax Act.

#### **C. SECTION DIRECTORY:**

Section 1: Amends s. 205.013, F.S., to reflect that the “Local Occupational License Tax Act” is renamed as the “Local Business Tax Act”.

Section 2: Amends s. 205.022, F.S., to revise and add definitions; and conform name changes.

Section 3: Amends s. 205.023, F.S., to conform name changes.

Section 4: Amends s. 205.0315, F.S., to conform name changes.

Section 5: Amends s. 205.032, F.S., to conform name changes.

Section 6: Amends s. 205.033, F.S., to conform name changes.

Section 7: Amends s. 205.042, F.S., to conform name changes.

Section 8: Amends s. 205.043, F.S., to conform name changes.

Section 9: Amends s. 205.045, F.S., to conform name changes.

Section 10: Amends s. 205.053, F.S., to conform name changes.

Section 11: Amends s. 205.0532, F.S., to conform name changes.

<sup>1</sup> Data provided by the Legislative Committee on Intergovernmental Relations

Section 12: Amends s. 205.0535, F.S., to conform name changes.  
Section 13: Amends s. 205.0536, F.S., to conform name changes.  
Section 14: Amends s. 205.0537, F.S., to conform name changes.  
Section 15: Amends s. 205.054, F.S., to conform name changes.  
Section 16: Amends s. 205.063, F.S., to conform name changes.  
Section 17: Amends s. 205.064, F.S., to conform name changes.  
Section 18: Amends s. 205.065, F.S., to conform name changes.  
Section 19: Amends s. 205.162, F.S., to conform name changes.  
Section 20: Amends s. 205.171, F.S., to conform name changes.  
Section 21: Amends s. 205.191, F.S., to conform name changes.  
Section 22: Amends s. 205.192, F.S., to conform name changes.  
Section 23: Amends s. 205.193, F.S., to conform name changes.  
Section 24: Amends s. 205.194, F.S., to conform name changes.  
Section 25: Amends s. 205.196, F.S., to conform name changes.  
Section 26: Amends s. 205.1965, F.S., to conform name changes.  
Section 27: Amends s. 205.1967, F.S., to conform name changes.  
Section 28: Amends s. 205.1969, F.S., to conform name changes.  
Section 29: Amends s. 205.1971, F.S., to conform name changes.  
Section 30: Amends s. 205.1973, F.S., to conform name changes.  
Section 31: Provides that the bill takes effect July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

### **D. FISCAL COMMENTS:**

None

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The use of the term "occupational license" is optional. For example, the City of Tallahassee currently refers to its occupational license as a business certificate.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

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A bill to be entitled  
An act relating to local occupational license taxes;  
amending ch. 205, F.S., consisting of ss. 205.013-  
205.1973, F.S.; changing the term "local occupational  
license tax" to "business tax"; defining the term  
"certificate" as it relates to business taxes; amending  
provisions to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 205.013, Florida Statutes, is amended  
to read:

205.013 Short title.--This chapter shall be known and may  
be cited as the "Local Business ~~Occupational License~~ Tax Act."

Section 2. Section 205.022, Florida Statutes, is amended  
to read:

205.022 Definitions.--When used in this chapter, the  
following terms and phrases shall have the meanings ascribed to  
them in this section, except when the context clearly indicates  
a different meaning:

(1)~~(6)~~ "Business," "profession," and "occupation" do not  
include the customary religious, charitable, or educational  
activities of nonprofit religious, nonprofit charitable, and  
nonprofit educational institutions in this state, which  
institutions are more particularly defined and limited as  
follows:

(a) "Religious institutions" means churches and  
ecclesiastical or denominational organizations or established

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physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.

(b) "Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption.

(c) "Charitable institutions" means only nonprofit corporations operating physical facilities in this state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

(2) "Certificate" means the document that is issued by the local governing authority which evidences that the person in whose name the document is issued has complied with the provisions of this chapter relating to the business tax.

(3)~~(5)~~ "Classification" means the method by which a business or group of businesses is identified by size or type, or both.

(4)~~(7)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(5)~~(1)~~ "Local business tax ~~occupational license~~" means the

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57 fees charged and the method by which a local governing authority  
58 grants the privilege of engaging in or managing any business,  
59 profession, or occupation within its jurisdiction. It does not  
60 mean any fees or licenses paid to any board, commission, or  
61 officer for permits, registration, examination, or inspection.  
62 Unless otherwise provided by law, these are deemed to be  
63 regulatory and in addition to, but not in lieu of, any local  
64 business tax ~~occupational license~~ imposed under the provisions  
65 of this chapter.

66 ~~(6)(2)~~ "Local governing authority" means the governing  
67 body of any county or incorporated municipality of this state.

68 ~~(7)(3)~~ "Person" means any individual, firm, partnership,  
69 joint adventure, syndicate, or other group or combination acting  
70 as a unit, association, corporation, estate, trust, business  
71 trust, trustee, executor, administrator, receiver, or other  
72 fiduciary, and includes the plural as well as the singular.

73 ~~(8)(4)~~ "Taxpayer" means any person liable for taxes  
74 imposed under the provisions of this chapter; any agent required  
75 to file and pay any taxes imposed hereunder; and the heirs,  
76 successors, assignees, and transferees of any such person or  
77 agent.

78 Section 3. Section 205.023, Florida Statutes, is amended  
79 to read:

80 205.023 Requirement to report status of fictitious name  
81 registration.--As a prerequisite to receiving a local business  
82 tax certificate ~~occupational license~~ under this chapter or  
83 transferring a business license under s. 205.033(2) or s.  
84 205.043(2), the applicant or new owner must present to the



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county or municipality that has jurisdiction to issue or transfer the certificate ~~license~~ either:

(1) A copy of the applicant's or new owner's current fictitious name registration, issued by the Division of Corporations of the Department of State; or

(2) A written statement, signed by the applicant or new owner, which sets forth the reason that the applicant or new owner need not comply with the Fictitious Name Act.

Section 4. Section 205.0315, Florida Statutes, is amended to read:

205.0315 Ordinance adoption after October 1, 1995.--Beginning October 1, 1995, a county or municipality that has not adopted a business ~~an occupational license~~ tax ordinance or resolution may adopt a business ~~an occupational license~~ tax ordinance. The business ~~occupational license~~ tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented s. 205.0535. If no adjacent local government has implemented s. 205.0535, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, the rate structure or classifications prescribed in its ordinance may be based upon those prescribed in ordinances adopted by local governments that have implemented s. 205.0535 in counties or municipalities that have a comparable population.

Section 5. Section 205.032, Florida Statutes, is amended to read:

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113           205.032 Levy; counties.--The governing body of a county  
114 may levy, by appropriate resolution or ordinance, a business an  
115 ~~occupational license~~ tax for the privilege of engaging in or  
116 managing any business, profession, or occupation within its  
117 jurisdiction. However, the governing body must first give at  
118 least 14 days' public notice between the first and last reading  
119 of the resolution or ordinance by publishing a notice in a  
120 newspaper of general circulation within its jurisdiction as  
121 defined by law. The public notice must contain the proposed  
122 classifications and rates applicable to the occupational license  
123 tax.

124           Section 6. Section 205.033, Florida Statutes, is amended  
125 to read:

126           205.033 Conditions for levy; counties.--

127           (1) The following conditions are imposed on the authority  
128 of a county governing body to levy a business an ~~occupational~~  
129 ~~license~~ tax:

130           (a) The tax must be based upon reasonable classifications  
131 and must be uniform throughout any class.

132           (b) Unless the county implements s. 205.0535 or adopts a  
133 new business ~~occupational license~~ tax ordinance under s.  
134 205.0315, a business an ~~occupational license~~ tax levied under  
135 this subsection may not exceed the rate provided by this chapter  
136 in effect for the year beginning October 1, 1971; however,  
137 beginning October 1, 1980, the county governing body may  
138 increase business ~~occupational license~~ taxes authorized by this  
139 chapter. The amount of the increase above the ~~license~~ tax rate  
140 levied on October 1, 1971, for ~~license~~ taxes levied at a flat

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rate may be up to 100 percent for business ~~occupational~~ license taxes that are \$100 or less; 50 percent for business ~~occupational~~ license taxes that are between \$101 and \$300; and 25 percent for business ~~occupational~~ license taxes that are more than \$300. Beginning October 1, 1982, the increase may not exceed 25 percent for license taxes levied at graduated or per unit rates. Authority to increase business ~~occupational~~ license taxes does not apply to licenses or certificates granted to any utility franchised by the county for which a franchise fee is paid.

(c) A certificate ~~license~~ is not valid for more than 1 year, and all certificates ~~licenses~~ expire on September 30 of each year, except as otherwise provided by law.

(2) Any certificate ~~business~~ ~~license~~ may be transferred to a new owner, when there is a bona fide sale of the business, upon payment of a transfer fee of up to 10 percent of the annual business ~~license~~ tax, but not less than \$3 nor more than \$25, and presentation of the original certificate ~~license~~ and evidence of the sale.

(3) Upon written request and presentation of the original certificate ~~license~~, any certificate ~~license~~ may be transferred from one location to another location in the same county upon payment of a transfer fee of up to 10 percent of the annual business ~~license~~ tax, but not less than \$3 nor more than \$25.

(4) The revenues derived from the business ~~occupational~~ ~~license~~ tax, exclusive of the costs of collection and any credit given for municipal business ~~license~~ taxes, shall be apportioned between the unincorporated area of the county and the

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incorporated municipalities located therein by a ratio derived by dividing their respective populations by the population of the county. This subsection does not apply to counties that have established a new rate structure under s. 205.0535.

(5) The revenues so apportioned shall be sent to the governing authority of each municipality, according to its ratio, and to the governing authority of the county, according to the ratio of the unincorporated area, within 15 days following the month of receipt. This subsection does not apply to counties that have established a new rate structure under s. 205.0535.

(6)(a) Each county, as defined in s. 125.011(1), or any county adjacent thereto may levy and collect, by an ordinance enacted by the governing body of the county, an additional business ~~occupational license~~ tax up to 50 percent of the appropriate business ~~license~~ tax imposed under subsection (1).

(b) Subsections (4) and (5) do not apply to any revenues derived from the additional tax imposed under this subsection. Proceeds from the additional business ~~license~~ tax must be placed in a separate interest-earning account, and the governing body of the county shall distribute this revenue, plus accrued interest, each fiscal year to an organization or agency designated by the governing body of the county to oversee and implement a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.

(c) An ordinance that levies an additional business ~~occupational license~~ tax under this subsection may not be

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adopted after January 1, 1995.

(7) Notwithstanding any other provisions of this chapter, the revenue received from a county business ~~occupational license~~ tax may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.

Section 7. Section 205.042, Florida Statutes, is amended to read:

205.042 Levy; municipalities.--The governing body of an incorporated municipality may levy, by appropriate resolution or ordinance, a business ~~an occupational license~~ tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. However, the governing body must first give at least 14 days' public notice between the first and last reading of the resolution or ordinance by publishing the notice in a newspaper of general circulation within its jurisdiction as defined by law. The notice must contain the proposed classifications and rates applicable to the business ~~occupational license~~ tax. The business ~~occupational license~~ tax may be levied on:

(1) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any business within its jurisdiction.

(2) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.

(3) Any person who does not qualify under subsection (1)

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or subsection (2) and who transacts any business or engages in any occupation or profession in interstate commerce, if the business ~~license~~ tax is not prohibited by s. 8, Art. I of the United States Constitution.

Section 8. Section 205.043, Florida Statutes, is amended to read:

205.043 Conditions for levy; municipalities.--

(1) The following conditions are imposed on the authority of a municipal governing body to levy a business ~~an occupational~~ license tax:

(a) The tax must be based upon reasonable classifications and must be uniform throughout any class.

(b) Unless the municipality implements s. 205.0535 or adopts a new business ~~occupational license~~ tax ordinance under s. 205.0315, a business ~~an occupational license~~ tax levied under this subsection may not exceed the rate in effect in the municipality for the year beginning October 1, 1971; however, beginning October 1, 1980, the municipal governing body may increase business ~~occupational license~~ taxes authorized by this chapter. The amount of the increase above the ~~license~~ tax rate levied on October 1, 1971, for ~~license~~ taxes levied at a flat rate may be up to 100 percent for business ~~occupational license~~ taxes that are \$100 or less; 50 percent for business ~~occupational license~~ taxes that are between \$101 and \$300; and 25 percent for business ~~occupational license~~ taxes that are more than \$300. Beginning October 1, 1982, an increase may not exceed 25 percent for ~~license~~ taxes levied at graduated or per unit rates. Authority to increase business ~~occupational license~~ taxes

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253 does not apply to certificates or licenses granted to any  
254 utility franchised by the municipality for which a franchise fee  
255 is paid.

256 (c) A certificate ~~license~~ is not valid for more than 1  
257 year and all certificates ~~licenses~~ expire on September 30 of  
258 each year, except as otherwise provided by law.

259 (2) Any business certificate ~~license~~ may be transferred to  
260 a new owner, when there is a bona fide sale of the business,  
261 upon payment of a transfer fee of up to 10 percent of the annual  
262 ~~license~~ tax, but not less than \$3 nor more than \$25, and  
263 presentation of the original certificate ~~license~~ and evidence of  
264 the sale.

265 (3) Upon written request and presentation of the original  
266 certificate ~~license~~, any certificate ~~license~~ may be transferred  
267 from one location to another location in the same municipality  
268 upon payment of a transfer fee of up to 10 percent of the annual  
269 ~~license~~ tax, but not less than \$3 nor more than \$25.

270 (4) If the governing body of the county in which the  
271 municipality is located has levied a business ~~an occupational~~  
272 ~~license~~ tax or subsequently levies such a tax, the collector of  
273 the county tax may issue the certificate ~~license~~ and collect the  
274 tax thereon.

275 Section 9. Section 205.045, Florida Statutes, is amended  
276 to read:

277 205.045 Transfer of administrative duties.--The governing  
278 body of a municipality that levies a business ~~an occupational~~  
279 ~~license~~ tax may request that the county in which the  
280 municipality is located issue the municipal certificate ~~license~~

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and collect the tax thereon. The governing body of a county that levies a business ~~an occupational license~~ tax may request that municipalities within the county issue the county certificate ~~license~~ and collect the tax thereon. Before any local government may issue certificates ~~occupational licenses~~ on behalf of another local government, appropriate agreements must be entered into by the affected local governments.

Section 10. Section 205.053, Florida Statutes, is amended to read:

205.053 Business tax certificates ~~Occupational licenses~~; dates due and delinquent; penalties.--

(1) All business tax certificates ~~licenses~~ shall be sold by the appropriate tax collector beginning August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. Provisions for partial certificates ~~licenses~~ may be made in the resolution or ordinance authorizing such certificates ~~licenses~~. Certificates ~~Licenses~~ that are not renewed when due and payable are delinquent and subject to a delinquency penalty of 10 percent for the month of October, plus an additional 5 percent penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed 25 percent of the business ~~occupational license~~ tax for the delinquent establishment.

(2) Any person who engages in or manages any business, occupation, or profession without first obtaining a local



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certificate ~~occupational license~~, if required, is subject to a penalty of 25 percent of the tax ~~license~~ due, in addition to any other penalty provided by law or ordinance.

(3) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required business ~~occupational license~~ tax within 150 days after the initial notice of tax due, and who does not obtain the required certificate ~~occupational license~~ is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.

Section 11. Section 205.0532, Florida Statutes, is amended to read:

205.0532 Revocation or refusal to renew; doing business with Cuba.--Any local governing authority issuing a business tax certificate ~~an occupational license~~ to any individual, business, or entity under this chapter may revoke or refuse to renew such certificate ~~license~~ if the individual, business, or entity, or parent company of such individual, business, or entity, is doing business with Cuba.

Section 12. Section 205.0535, Florida Statutes, is amended to read:

205.0535 Reclassification and rate structure revisions.--

(1) By October 1, 1995, any municipality or county may, by ordinance, reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met. A person who is engaged in the business of providing local exchange telephone

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service or a pay telephone service in a municipality or in the unincorporated area of a county and who pays the business ~~occupational license~~ tax under the category designated for telephone companies or a pay telephone service provider certified pursuant to s. 364.3375 is deemed to have but one place of business or business location in each municipality or unincorporated area of a county. Pay telephone service providers may not be assessed a business ~~an occupational license~~ tax on a per-instrument basis.

(2) Before adopting a reclassification and revision ordinance, the municipality or county must establish an equity study commission and appoint its members. Each member of the study commission must be a representative of the business community within the local government's jurisdiction. Each equity study commission shall recommend to the appropriate local government a classification system and rate structure for business ~~local occupational license~~ taxes.

(3) (a) After the reclassification and rate structure revisions have been transmitted to and considered by the appropriate local governing body, it may adopt by majority vote a new business ~~occupational license~~ tax ordinance. Except that a minimum ~~license~~ tax of up to \$25 is permitted, the reclassification may ~~shall~~ not increase the ~~occupational license~~ tax by more than the following: for certificates ~~licenses~~ costing \$150 or less, 200 percent; for certificates ~~licenses~~ costing more than \$150 but not more than \$500, 100 percent; for certificates ~~licenses~~ costing more than \$500 but not more than \$2,500, 75 percent; for certificates ~~licenses~~ costing more than

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\$2,500 but not more than \$10,000, 50 percent; and for  
~~certificates licenses~~ costing more than \$10,000, 10 percent;  
 however, in no case may the tax on any certificate ~~license~~ be  
 increased more than \$5,000.

(b) The total annual revenue generated by the new rate  
 structure for the fiscal year following the fiscal year during  
 which the rate structure is adopted may not exceed:

1. For municipalities, the sum of the revenue base and 10  
 percent of that revenue base. The revenue base is the sum of the  
~~business occupational license~~ tax revenue generated by  
certificates licenses issued for the most recently completed  
 local fiscal year or the amount of revenue that would have been  
 generated from the authorized increases under s. 205.043(1)(b),  
 whichever is greater, plus any revenue received from the county  
 under s. 205.033(4).

2. For counties, the sum of the revenue base, 10 percent  
 of that revenue base, and the amount of revenue distributed by  
 the county to the municipalities under s. 205.033(4) during the  
 most recently completed local fiscal year. The revenue base is  
 the ~~business occupational license~~ tax revenue generated by  
certificates licenses issued for the most recently completed  
 local fiscal year or the amount of revenue that would have been  
 generated from the authorized increases under s. 205.033(1)(b),  
 whichever is greater, but may not include any revenues  
 distributed to municipalities under s. 205.033(4).

(c) In addition to the revenue increases authorized by  
 paragraph (b), revenue increases attributed to the increases in  
 the number of certificates ~~licenses~~ issued are authorized.

(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, increase by ordinance the rates of business local ~~occupational license~~ taxes by up to 5 percent. The increase, however, may not be enacted by less than a majority plus one vote of the governing body.

(5) A certificate may not ~~No license shall~~ be issued unless the federal employer identification number or social security number is obtained from the person to be taxed ~~licensed~~.

Section 13. Section 205.0536, Florida Statutes, is amended to read:

205.0536 Distribution of county revenues.--A county that establishes a new rate structure under s. 205.0535 shall retain all business ~~occupational license~~ tax revenues collected from businesses, professions, or occupations whose places of business are located within the unincorporated portions of the county. Any business ~~occupational license~~ tax revenues collected by a county that establishes a new rate structure under s. 205.0535 from businesses, professions, or occupations whose places of business are located within a municipality, exclusive of the costs of collection, must be apportioned between the unincorporated area of the county and the incorporated municipalities located therein by a ratio derived by dividing their respective populations by the population of the county. As used in this section, the term "population" means the latest official state estimate of population certified under s. 186.901. The revenues so apportioned shall be sent to the

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governing authority of each municipality, according to its ratio, and to the governing authority of the county, according to the ratio of the unincorporated area, within 15 days after the month of receipt.

Section 14. Section 205.0537, Florida Statutes, is amended to read:

205.0537 Vending and amusement machines.--The business premises where a coin-operated or token-operated vending machine that dispenses products, merchandise, or services or where an amusement or game machine is operated must assure that any required municipal or county business tax certificate ~~occupational license~~ for the machine is secured. The term "vending machine" does not include coin-operated telephone sets owned by persons who are in the business of providing local exchange telephone service and who pay the business tax ~~occupational license~~ under the category designated for telephone companies in the municipality or county or a pay telephone service provider certified pursuant to s. 364.3375. The business license tax for vending and amusement machines must be assessed based on the highest number of machines located on the business premises on any single day during the previous certification ~~licensing~~ year or, in the case of new businesses, be based on an estimate for the current year. Replacement of one vending machine with another machine during a certification ~~licensing~~ year does not affect the tax assessment for that year, unless the replacement machine belongs to a business ~~an occupational license~~ tax classification that requires a higher tax rate. For the first year in which a municipality or county assesses a

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449 business ~~an occupational license~~ tax on vending machines, each  
450 business owning machines located in the municipality or county  
451 must notify the municipality or county, upon request, of the  
452 location of such machines. Each business owning machines must  
453 provide notice of the provisions of this section to each  
454 affected business premises where the machines are located. The  
455 business premises must secure the certificate ~~license~~ if it is  
456 not otherwise secured.

457 Section 15. Section 205.054, Florida Statutes, is amended  
458 to read:

459 205.054 Business ~~Occupational license~~ tax; partial  
460 exemption for engaging in business or occupation in enterprise  
461 zone.--

462 (1) Notwithstanding the provisions of s. 205.033(1)(a) or  
463 s. 205.043(1)(a), the governing body of a county or municipality  
464 may authorize by appropriate resolution or ordinance, adopted  
465 pursuant to the procedure established in s. 205.032 or s.  
466 205.042, the exemption of 50 percent of the business  
467 ~~occupational license~~ tax levied for the privilege of engaging in  
468 or managing any business, profession, or occupation in the  
469 respective jurisdiction of the county or municipality when such  
470 privilege is exercised at a permanent business location or  
471 branch office located in an enterprise zone.

472 (2) Such exemption applies to each classification for  
473 which a business tax certificate ~~an occupational license~~ is  
474 required in the jurisdiction. Classifications shall be the same  
475 in an enterprise zone as elsewhere in the jurisdiction. Each  
476 county or municipal business tax certificate ~~occupational~~

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license issued with the exemption authorized in this section shall be in the same general form as the other county or municipal business tax certificates ~~occupational licenses~~ and shall expire at the same time as those other certificates ~~licenses~~ expire as fixed by law. Any certificate ~~license~~ issued with the exemption authorized in this section is nontransferable. The exemption authorized in this section does not apply to any penalty authorized in s. 205.053.

(3) Each tax collecting authority of a county or municipality which provides the exemption authorized in this section shall issue to each person who may be entitled to the exemption a certificate ~~license~~ pursuant to the provisions contained in this section. Before a certificate ~~license~~ with such exemption is issued to an applicant, the tax collecting authority must, in each case, be provided proof that the applicant is entitled to such exemption. Such proof shall be made by means of a statement filed under oath with the tax collecting authority, which statement indicates that the permanent business location or branch office of the applicant is located in an enterprise zone of a jurisdiction which has authorized the exemption permitted in this section.

(4) Any certificate ~~license~~ obtained with the exemption authorized in this subsection by the commission of fraud upon the issuing authority ~~is shall be deemed null and void~~. Any person who has fraudulently obtained such exemption and thereafter engages, under color of the certificate ~~license~~, in any business, profession, or occupation requiring the certificate ~~license~~ is subject to prosecution for engaging in a

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505 business, profession, or occupation without having the required  
506 certificate ~~license~~ under the laws of the state.

507       (5) ~~If in the event~~ an area nominated as an enterprise  
508 zone pursuant to s. 290.0055 has not yet been designated  
509 pursuant to s. 290.0065, the governing body of a county or  
510 municipality may enact the appropriate ordinance or resolution  
511 authorizing the exemption permitted in this section; however,  
512 such ordinance or resolution will not be effective until such  
513 area is designated pursuant to s. 290.0065.

514       (6) This section expires on the date specified in s.  
515 290.016 for the expiration of the Florida Enterprise Zone Act;  
516 and a certificate may not ~~no license shall~~ be issued with the  
517 exemption authorized in this section for any period beginning on  
518 or after that date.

519       Section 16. Section 205.063, Florida Statutes, is amended  
520 to read:

521       205.063 Exemptions; motor vehicles.--Vehicles used by any  
522 person certified ~~licensed~~ under this chapter for the sale and  
523 delivery of tangible personal property at ~~either~~ wholesale or  
524 retail from his or her place of business on which a business tax  
525 ~~license~~ is paid may ~~shall~~ not be construed to be separate places  
526 of business, and a business tax ~~no license~~ may not be levied on  
527 such vehicles or the operators thereof as salespersons or  
528 otherwise by a county or incorporated municipality, any other  
529 law to the contrary notwithstanding.

530       Section 17. Section 205.064, Florida Statutes, is amended  
531 to read:

532       205.064 Farm, aquacultural, grove, horticultural,



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floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.--

(1) A No local business tax certificate is not  
~~occupational license shall be~~ required of any natural person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such natural person in the state.

(2) A wholesale farmers' produce market may ~~shall have the right to~~ pay a tax of not more than \$200 for a certificate  
~~license~~ that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being required to obtain individual local certificates ~~occupational licenses~~ to so engage.

Section 18. Section 205.065, Florida Statutes, is amended to read:

205.065 Exemption; nonresident persons regulated by the Department of Business and Professional Regulation.--If any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation has paid a business ~~an occupational~~  
~~license~~ tax for the current year to the county or municipality in the state where the person's permanent business location or branch office is maintained, no other local governing authority may levy a business ~~an occupational license~~ tax, or any registration or regulatory fee equivalent to the business

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~~occupational license~~ tax, on the person for performing work or  
 services on a temporary or transitory basis in another  
 municipality or county. ~~In no event shall any~~ Work or services  
 performed in a place other than the county or municipality where  
 the permanent business location or branch office is maintained  
may not be construed as creating a separate business location or  
 branch office of that person for the purposes of this chapter.  
 Any properly licensed contractor asserting an exemption under  
 this section who is unlawfully required by the local governing  
 authority to pay a business ~~an occupational license~~ tax, or any  
 registration or regulatory fee equivalent to a business ~~the~~  
~~occupational license~~ tax, has ~~shall have~~ standing to challenge  
 the propriety of the local government's actions, and the  
 prevailing party in such a challenge is entitled to recover a  
 reasonable attorney's fee.

Section 19. Section 205.162, Florida Statutes, is amended  
 to read:

205.162 Exemption allowed certain disabled persons, the  
 aged, and widows with minor dependents.--

(1) All disabled persons physically incapable of manual  
 labor, widows with minor dependents, and persons 65 years of age  
 or older, with not more than one employee or helper, and who use  
 their own capital only, not in excess of \$1,000, may ~~shall be~~  
~~allowed to~~ engage in any business or occupation in counties in  
 which they live without being required to pay for a business tax  
certificate ~~license~~. The exemption provided by this section  
 shall be allowed only upon the certificate of the county  
 physician, or other reputable physician, that the applicant

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claiming the exemption is disabled, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a certificate ~~license~~ which shall have plainly stamped or written across the face thereof the fact that it is issued under this section, and the reason for the exemption shall be written thereon.

(2) Neither ~~In no event under this nor or~~ any other law exempts ~~shall~~ any person, ~~veteran or otherwise, be allowed any exemption whatsoever~~ from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors or malt and vinous beverages.

Section 20. Section 205.171, Florida Statutes, is amended to read:

205.171 Exemptions allowed disabled veterans of any war or their unremarried spouses.--

(1) Any bona fide, permanent resident elector of the state who served as an officer or enlisted person during any of the periods specified in s. 1.01(14) in the Armed Forces of the United States, National Guard, or United States Coast Guard or Coast Guard Reserve, or any temporary member thereof, who has actually been, or may hereafter be, reassigned by the air force, army, navy, coast guard, or marines to active duty during any war, declared or undeclared, armed conflicts, crises, etc., who was honorably discharged from the service of the United States,

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617 and who at the time of his or her application for a business tax  
 618 certificate is license as hereinafter mentioned shall be  
 619 disabled from performing manual labor shall, upon sufficient  
 620 identification, proof of being a permanent resident elector in  
 621 the state, and production of an honorable discharge from the  
 622 service of the United States:

623 (a) Be granted a certificate ~~license~~ to engage in any  
 624 business or occupation in the state which may be carried on  
 625 mainly through the personal efforts of the certificateholder  
 626 ~~licensee~~ as a means of livelihood and for which the state  
 627 license or, county, or municipal certificate license does not  
 628 exceed the sum of \$50 for each without payment of any business  
 629 ~~license~~ tax otherwise provided for by law; or

630 (b) Be entitled to an exemption to the extent of \$50 on  
 631 any certificate ~~license~~ to engage in any business or occupation  
 632 in the state which may be carried on mainly through the personal  
 633 efforts of the certificateholder ~~licensee~~ as a means of  
 634 livelihood when the state license or, county, or municipal  
 635 certificate license for such business or occupation ~~is shall be~~  
 636 more than \$50. The exemption ~~heretofore referred to~~ shall extend  
 637 to and include the right of the certificateholder ~~licensee~~ to  
 638 operate an automobile-for-hire of not exceeding five-passenger  
 639 capacity, including the driver, when ~~it shall be made to appear~~  
 640 ~~that~~ such automobile is ~~bona fide~~ owned or contracted to be  
 641 purchased by the certificateholder ~~licensee~~ and is being  
 642 operated by him or her as a means of livelihood and that the  
 643 proper business ~~license~~ tax for the operation of such motor  
 644 vehicle for private use has been applied for and attached to the

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said motor vehicle and the proper fees ~~therefor~~ paid by the  
certificateholder ~~licensee~~.

(2) When ~~any~~ such person applies ~~shall apply~~ for a  
certificate license to conduct any business or occupation for  
which ~~either~~ the county or municipal business license tax  
exceeds ~~as fixed by law shall exceed the sum of~~ \$50, the  
remainder of such ~~license~~ tax in excess of \$50 shall be paid in  
cash.

(3) Each ~~and every~~ tax collecting authority of this state  
and of each county ~~thereof~~ and each municipality ~~therein~~ shall  
issue to such persons as may be entitled hereunder a certificate  
~~license~~ pursuant to the foregoing provision and subject to the  
conditions thereof. Such certificate license when issued shall  
be marked across the face ~~thereof~~ "Veterans Exempt  
License"--"Not Transferable." Before issuing the certificate  
~~same~~, proof shall be duly made ~~in each case~~ that the applicant  
is entitled under ~~the conditions of~~ this law to receive the  
exemption ~~herein provided for~~. The proof may be made by  
establishing to the satisfaction of such tax collecting  
authority by means of certificate of honorable discharge or  
certified copy thereof that the applicant is a veteran within  
the purview of this section and by exhibiting:

(a) A certificate of government-rated disability to an  
extent of 10 percent or more;

(b) The affidavit or testimony of a reputable physician  
who personally knows the applicant and who makes oath that the  
applicant is disabled from performing manual labor as a means of  
livelihood;

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(c) The certificate of the veteran's service officer of the county in which applicant lives, duly executed under the hand and seal of the chief officer and secretary thereof, attesting the fact that the applicant is disabled and entitled to receive a certificate ~~license~~ within the meaning and intent of this section;

(d) A pension certificate issued to him or her by the United States by reason of such disability; or

(e) Such other reasonable proof as may be required by the tax collecting authority to establish the fact that such applicant is ~~se~~ disabled.

All certificates ~~licenses~~ issued under this section shall be in the same general form as other state, county, and municipal licenses and shall expire at the same time as such other licenses are fixed by law to expire.

(4) Certificates ~~All licenses~~ obtained ~~under the provisions of this section~~ by the commission of fraud upon any issuing authority are ~~shall be deemed null and~~ void. Any person who has fraudulently obtained a certificate ~~any such license~~, or who has fraudulently received any transfer of a certificate ~~license~~ issued to another, and has thereafter engaged in any business or occupation requiring a certificate ~~license~~ under color thereof is ~~shall be~~ subject to prosecution ~~as~~ for engaging in a business or occupation without having the required certificate ~~license~~ under the laws of the state. Such certificate ~~may license~~ ~~shall~~ not be issued in any county other than the county where the ~~wherein said~~ veteran is a ~~bona fide~~

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resident citizen elector, unless such veteran produces ~~applying~~  
~~therefor shall produce to the tax collecting authority in such~~  
~~county~~ a certificate of the tax collector of his or her home  
 county to the effect that no exemption from certification  
~~license~~ has been granted to such veteran in his or her home  
 county under ~~the authority of~~ this section.

(5) Neither ~~In no event, under this nor or~~ any other law  
~~exempts, shall any person, veteran or otherwise, be allowed any~~  
~~exemption whatsoever~~ from the payment of any amount required by  
 law for the issuance of a license to sell intoxicating liquors  
 or malt and vinous beverages.

(6) The unremarried spouse of a ~~the~~ deceased disabled  
 veteran of any war in which the United States Armed Forces  
 participated is ~~will be~~ entitled to the same exemptions as the  
 disabled veteran.

Section 21. Section 205.191, Florida Statutes, is amended  
 to read:

205.191 Religious tenets; exemption.--~~Nothing in This~~  
~~chapter does not shall be construed to~~ require a business tax  
certificate ~~license~~ for practicing the religious tenets of any  
 church.

Section 22. Section 205.192, Florida Statutes, is amended  
 to read:

205.192 Charitable, etc., organizations; occasional sales,  
 fundraising; exemption.--A business tax certificate is not ~~No~~  
~~occupational license shall be~~ required of any charitable,  
 religious, fraternal, youth, civic, service, or other similar  
~~such~~ organization that ~~when the organization~~ makes occasional

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sales or engages in fundraising projects that ~~when the projects~~  
are performed exclusively by the members, ~~thereof~~ and ~~when the~~  
proceeds derived from the activities are used exclusively in the  
charitable, religious, fraternal, youth, civic, and service  
activities of the organization.

Section 23. Section 205.193, Florida Statutes, is amended  
to read:

205.193 Mobile home setup operations; local business tax  
certificate license prohibited; exception.--A ~~No~~ county,  
municipality, or other unit of local government may not require  
a ~~duly~~ licensed mobile home dealer or a ~~duly~~ licensed mobile  
home manufacturer, or an employee of a ~~such~~ dealer or  
manufacturer, who performs setup operations as defined in s.  
320.822 to be a certificateholder ~~licensed~~ to engage in such  
operations. However, such dealer or manufacturer must ~~shall be~~  
~~required to~~ obtain a local certificate ~~occupational license~~ for  
his or her permanent business location or branch office, which  
certificate license shall not require for its issuance any  
conditions other than those required by chapter 320.

Section 24. Section 205.194, Florida Statutes, is amended  
to read:

205.194 Prohibition of local business tax certificate  
~~occupational licensure~~ without exhibition of state license or  
registration.--

(1) Any person applying for or renewing a local business  
tax certificate ~~occupational license~~ for the ~~licensing~~ period  
beginning October 1, 1985, to practice any profession regulated  
by the Department of Business and Professional Regulation, or



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any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local certificate ~~occupational license~~ may be issued. Thereafter, only persons applying for the first time for a certificate ~~local occupational license~~ must exhibit such certification, registration, or license.

(2) The Department of Business and Professional Regulation shall, by August 1 of each year, supply to the local official who issues local certificates ~~occupational licenses~~ a current list of professions it regulates and information regarding those persons for whom certificates ~~local occupational licenses~~ should not be renewed due to the suspension, revocation, or inactivation of such person's state license, certificate, or registration. The official who issues local certificates ~~occupational licenses~~ shall not renew such license unless such person can exhibit an active state certificate, registration, or license.

(3) This section shall not apply to s. 489.113, s. 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s. 489.521, or s. 489.537.

Section 25. Section 205.196, Florida Statutes, is amended to read:

205.196 Pharmacies and pharmacists.--~~A~~ No state, county, or municipal licensing agency may not ~~shall~~ issue a business tax certificate ~~an occupational license~~ to operate a pharmacy unless the applicant produces ~~shall first exhibit~~ a current permit issued by the Board of Pharmacy; however, no such certificate ~~is occupational license~~ shall be required in order to practice the

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profession of pharmacy.

Section 26. Section 205.1965, Florida Statutes, is amended to read:

205.1965 Assisted living facilities.--A county or municipality may not issue a business tax certificate ~~an occupational license~~ for the operation of an assisted living facility pursuant to part III of chapter 400 without first ascertaining that the applicant has been licensed by the Agency for Health Care Administration to operate such facility at the specified location or locations. The Agency for Health Care Administration shall furnish to local agencies responsible for issuing certificates ~~occupational licenses~~ sufficient instructions for making the ~~above~~ required determinations.

Section 27. Section 205.1967, Florida Statutes, is amended to read:

205.1967 Prerequisite for issuance of pest control business tax certificate ~~occupational license~~.--A municipality or county may not issue a business tax certificate ~~an occupational license~~ to any pest control business regulated ~~coming~~ under chapter 482, unless a current license has been procured from the Department of Agriculture and Consumer Services for each of its business locations in that municipality or county. Upon presentation of the requisite licenses from the department and the required fee, a business tax certificate ~~an occupational license~~ shall be issued by the municipality or county in which application is made.

Section 28. Section 205.1969, Florida Statutes, is amended to read:

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205.1969 Health studios; consumer protection.--~~A~~ No county or municipality may not ~~shall~~ issue or renew a business tax certificate ~~an occupational license~~ for the operation of a health studio pursuant to ss. 501.012-501.019 or ballroom dance studio pursuant to s. 501.143, unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 29. Section 205.1971, Florida Statutes, is amended to read:

205.1971 Sellers of travel; consumer protection.--~~A~~ No county or municipality may not ~~shall~~ issue or renew a business tax certificate ~~an occupational license~~ to engage in business as a seller of travel pursuant to part XI of chapter 559 unless such business exhibits a current registration or letter of exemption from the Department of Agriculture and Consumer Services.

Section 30. Section 205.1973, Florida Statutes, is amended to read:

205.1973 Telemarketing businesses; consumer protection.--~~A~~ county or municipality may not issue or renew a business tax certificate ~~an occupational license~~ for the operation of a telemarketing business under ss. 501.604 and 501.608, unless such business exhibits a current license or registration from the Department of Agriculture and Consumer Services or a current affidavit of exemption.

Section 31. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. / (for drafter's use only)

Bill No. 1269

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill:

Representative(s) Cusack offered the following:

**Amendment (with directory and title amendments)**

Between line(s) 8 and 9 insert:

WHEREAS local governments impose an "occupational license tax" for the privilege of engaging in a business or profession;

WHEREAS what a particular charge is named by government is not dispositive of its correct characterization;

WHEREAS local governments have a bona fide interest in protecting its residents from consumer fraud;

WHEREAS some unscrupulous persons are presenting their local occupational license to consumers as proof of their competency to perform various repairs and services;

WHEREAS local consumers are victimized by these representations;

WHEREAS changing the name of the item issued by local governments from "occupational license" to "local business tax" may eliminate some fraudulent misrepresentations;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

20        THEREFORE the Legislature seeks to change the name of the  
21        "Local Occupational License Tax Act" to the "Local Business Tax  
22        Act" and make related changes.  
23

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. **2** (for drafter's use only)

Bill No. **1269**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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Council/Committee hearing bill:

Representative(s) Cusack offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 46 and insert:

local governing authority which bears the words "Local Business  
Tax Certificate" and evidences that the person in

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. **3** (for drafter's use only)

Bill No. **1269**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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Council/Committee hearing bill:

Representative(s) Cusack offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 838 and insert:

Section 31. This act shall take effect January 1, 2007.

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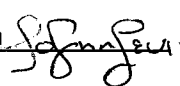

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 7037      PCB JU 06-02      Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact

**SPONSOR(S):** Judiciary Committee

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SJR 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	12 Y, 2 N	Thomas	Hogge
1) Finance & Tax Committee		Levin 	Diez-Arguelles 
2)			
3)			
4)			
5)			

### SUMMARY ANALYSIS

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$50,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Ensure lower taxes**

Amendments to Florida's Constitution having significant financial impact will require a two-thirds vote of the electorate in order to become effective.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Revision or Amendment to the Constitution**

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>1</sup> Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.<sup>2</sup>

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.<sup>3</sup> However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.<sup>4</sup> Section 5, Article XI, of Florida's Constitution was amended in 2002 requiring the Legislature to provide a statement to the voters regarding the probable financial impact of any amendment proposed by initiative. In response, the Legislature created the Financial Impact Estimating Conference to review, analyze, and estimate the financial impact of amendments.<sup>5</sup>

##### **Effect of Joint Resolution**

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment or revision *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such

<sup>1</sup> See Art. XI, ss. 1-4 & 6, Fla. Const.

<sup>2</sup> See Art. XI, ss. 2, 5, and 6, Fla. Const.

<sup>3</sup> See Art. XI, s. 5(e), Fla. Const.

<sup>4</sup> See Art. XI, s. 7, Fla. Const.

<sup>5</sup> See s. 100.371, F.S.

proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million.

The joint resolution further provides that the determination of whether a proposed amendment or revision imposes a significant financial impact on state government will be made and certified in accordance with general law. The joint resolution also deletes obsolete language in this section of the state constitution relating to items on the November 8, 1994 ballot.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.<sup>6</sup>

Below is a list of the approval percentages of some constitutional amendments in the past that might have required a two-thirds vote had this joint resolution been law.

TITLE	SOURCE	YEAR	APPROVAL PERCENTAGE
High Speed Rail	Initiative	2000	52.7%
Class Size	Initiative	2002	52.4%
Voluntary Pre-Kindergarten	Initiative	2002	59.2%
Article V – Local Funding of State Courts	Revision Commission	1998	56.9%

### Appearance on the Ballot

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

**TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.**— Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “existing state tax or fee” means any tax or fee that produces revenue subject to lump-sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, if that tax or fee is in effect at the time of the election when the proposed amendment or revision is considered. This measure would also require that a proposed amendment or revision to the State Constitution that would impose a significant financial impact on state government must be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “significant financial impact” means a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision imposes a significant financial impact on state government would be made and certified in accordance with general law. This measure adds to an existing provision of the Florida Constitution, passed by Florida voters in 1996, that currently applies the same two-thirds

<sup>6</sup> Art. XI, s. 5(e), Fla. Const., provides: “If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”

vote requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 7 of Article XI of the Florida Constitution relating to amendments and revisions.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

**Non-Recurring**

**FY 2006-07**

General Revenue

Publication Costs

\$50,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, requiring a higher voting threshold for proposed amendments and revisions that increase a state tax or fee or impose a significant financial impact on state government may affect the likelihood of success of future proposals. See Effect of Proposed Changes, Section I.B. of this analysis, for voting results on past amendments that might have been affected had this joint resolution been in effect at the time of their respective elections.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.<sup>7</sup> The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately \$50,000 in FY 2006-07.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

<sup>7</sup> See Art. XI, s. 5(c), Fla. Const.  
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DATE: 3/28/2006

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>8</sup> Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>9</sup> Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.<sup>10</sup>

A similar proposal to this joint resolution passed the House of Representatives in the 2005 legislative session,<sup>11</sup> but was never considered by the Senate. Last year's proposal differed in that it applied to constitutional amendments or revisions that increased local taxes and fees, as well as to those that increased state taxes or fees and those that imposed a significant financial impact on state or local governments. This joint resolution only applies to constitutional amendments or revisions that increase state taxes or fees and those that impose a significant financial impact on state government. Last year's proposal passed unanimously out of the Judiciary Committee and the Justice Council, and by a 9 to 1 vote in the Ethics and Elections Committee.

As drafted, the joint resolution is unclear as to its impact on amendments which would reduce governmental expenditures. The base year for purposes of determining significant fiscal impact could be clarified since it is unclear whether the base year would be fiscal year 2006-2007 or fiscal year 2007-2008.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

<sup>8</sup> See Art. XI, s. 1, Fla. Const.

<sup>9</sup> See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

<sup>10</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>11</sup> See CS/HB 1741 (2005)

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House Joint Resolution

A joint resolution proposing an amendment to Section 7 of Article XI of the State Constitution, relating to state tax or fee limitations, to specify application to imposition of new state taxes or fees, increases in existing state taxes or fees, and imposition of significant financial impact on state government.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 7 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 7. Tax, or fee, or significant financial impact limitation.--Notwithstanding Article X, Section 12(d) of this constitution:

(a) No amendment or revision to this constitution that imposes a new state tax or fee shall become effective ~~be imposed~~ ~~on or after November 8, 1994 by any amendment to this~~ ~~constitution~~ unless the proposed amendment or revision is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment or revision is considered. For purposes of this ~~subsection~~ ~~section~~, the phrase "new state tax or fee" shall mean any tax or fee that ~~which~~

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29 would produce revenue subject to lump sum or other appropriation  
30 by the Legislature, either for the state general revenue fund or  
31 any trust fund, which tax or fee is not in effect on November 7,  
32 1994. ~~including without limitation such taxes and fees as are~~  
33 ~~the subject of proposed constitutional amendments appearing on~~  
34 ~~the ballot on November 8, 1994. This section shall apply to~~  
35 ~~proposed constitutional amendments relating to State taxes or~~  
36 ~~fees which appear on the November 8, 1994 ballot, or later~~  
37 ~~ballots, and Any such proposed amendment or revision that which~~  
38 fails to gain the two-thirds vote required by this subsection  
39 ~~hereby~~ shall be null, void, and without effect.

40       **(b)** No amendment or revision to this constitution that  
41 increases an existing state tax or fee shall become effective  
42 unless the proposed amendment or revision is approved by not  
43 fewer than two-thirds of the voters voting in the election in  
44 which such proposed amendment or revision is considered. For  
45 purposes of this subsection, the phrase "existing state tax or  
46 fee" means any tax or fee that produces revenue subject to lump  
47 sum or other appropriation by the legislature, either for the  
48 state general revenue fund or any trust fund, which tax or fee  
49 is in effect at the time of the election at which the proposed  
50 amendment or revision is considered. Any such proposed amendment  
51 or revision that fails to gain the two-thirds vote required by  
52 this subsection shall be null, void, and without effect.

53       **(c)** No amendment or revision to this constitution that  
54 imposes a significant financial impact on state government shall  
55 become effective unless the proposed amendment or revision is  
56 approved by not fewer than two-thirds of the voters voting in

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57 the election in which such proposed amendment or revision is  
58 considered. For purposes of this subsection, the phrase  
59 "significant financial impact" means a financial impact to the  
60 state in any state fiscal year prior to and including the first  
61 state fiscal year of full implementation, including requiring  
62 the legislature to increase taxes or fees in order to maintain  
63 the state budget at existing revenues and expenditures, in an  
64 amount greater than two-tenths of one percent of the portion of  
65 the state budget appropriated from the state general revenue  
66 fund, as established in the general appropriations act approved  
67 by the governor, for the state fiscal year ending in the year  
68 prior to the election in which such proposed amendment or  
69 revision is considered. The determination of whether a proposed  
70 amendment or revision imposes a significant financial impact on  
71 state government shall be made and certified in accordance with  
72 general law. Any such proposed amendment or revision that fails  
73 to gain the two-thirds vote required by this subsection shall be  
74 null, void, and without effect.

75 BE IT FURTHER RESOLVED that the following statement be  
76 placed on the ballot:

77 CONSTITUTIONAL AMENDMENT

78 ARTICLE XI, SECTION 7

79 TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE  
80 OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.--Under this measure  
81 proposing to amend the State Constitution, a proposed amendment  
82 or revision to the State Constitution that increases an existing  
83 state tax or fee would have to be approved by at least two-  
84 thirds of those voters voting in the election in which the



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85 amendment or revision is considered. For the purposes of this  
86 measure, "existing state tax or fee" means any tax or fee that  
87 produces revenue subject to lump-sum or other appropriation by  
88 the Legislature, either for the state general revenue fund or  
89 any trust fund, if that tax or fee is in effect at the time of  
90 the election when the proposed amendment or revision is  
91 considered. This measure would also require that a proposed  
92 amendment or revision to the State Constitution that would  
93 impose a significant financial impact on state government must  
94 be approved by at least two-thirds of those voters voting in the  
95 election in which the amendment or revision is considered. For  
96 the purposes of this measure, "significant financial impact"  
97 means a financial impact to the state in any state fiscal year  
98 prior to and including the first state fiscal year of full  
99 implementation, including requiring the Legislature to increase  
100 taxes or fees in order to maintain the state budget at existing  
101 revenues and expenditures, in an amount greater than two-tenths  
102 of one percent of the portion of the state budget appropriated  
103 from the state general revenue fund, as established in the  
104 General Appropriations Act approved by the Governor, for the  
105 state fiscal year ending in the year prior to the election in  
106 which such proposed amendment or revision is considered. The  
107 determination of whether a proposed amendment or revision  
108 imposes a significant financial impact on state government would  
109 be made and certified in accordance with general law. This  
110 measure adds to an existing provision of the Florida  
111 Constitution, passed by Florida voters in 1996, that currently  
112 applies the same two-thirds vote requirement only to a proposed

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113 amendment that imposes a new state tax or fee. All other  
114 proposed amendments or revisions presently must be approved by  
115 only a simple majority of those voting on the proposal. The  
116 measure also makes conforming changes in this section of the  
117 State Constitution and repeals obsolete provisions relating to  
118 items on the November 8, 1994, ballot.

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance & Tax Committee

Representative Simmons offered the following:

**Amendment (with ballot statement amendment)**

Remove line(s) 18-74 and insert:

SECTION 7. Tax, or fee, or significant state spending  
limitation.--Notwithstanding Article X, Section 12(d) of this  
constitution:7

(a) No amendment or revision to this constitution that  
imposes a new state tax or fee shall become effective ~~be imposed~~  
~~on or after November 8, 1994 by any amendment to this~~  
~~constitution unless the proposed amendment or revision is~~  
approved by not fewer than two-thirds of the voters voting in  
the election in which such proposed amendment or revision is  
considered. For purposes of this subsection ~~section~~, the phrase  
"new state tax or fee" shall mean any tax or fee that ~~which~~  
would produce revenue to state government. ~~subject to lump sum~~  
~~or other appropriation by the Legislature, either for the state~~  
~~general revenue fund or any trust fund, which tax or fee is not~~  
~~in effect on November 7, 1994 including without limitation such~~  
~~taxes and fees as are the subject of proposed constitutional~~  
~~amendments appearing on the ballot on November 8, 1994. This~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 ~~section shall apply to proposed constitutional amendments~~  
24 ~~relating to State taxes or fees which appear on the November 8,~~  
25 ~~1994 ballot, or later ballots, and Any such proposed amendment~~  
26 ~~or revision that which fails to gain the two-thirds vote~~  
27 ~~required by this subsection hereby shall be null, void, and~~  
28 ~~without effect.~~

29 (b) No amendment or revision to this constitution that  
30 increases an existing state tax or fee shall become effective  
31 unless the proposed amendment or revision is approved by not  
32 fewer than two-thirds of the voters voting in the election in  
33 which such proposed amendment or revision is considered. For  
34 purposes of this subsection, the phrase "existing state tax or  
35 fee" shall mean any tax or fee that produces revenue to state  
36 government. Any such proposed amendment or revision that fails  
37 to gain the two-thirds vote required by this subsection shall be  
38 null, void, and without effect.

39 (c) No amendment or revision to this constitution that  
40 would result in significant additional spending by state  
41 government shall become effective unless the proposed amendment  
42 or revision is approved by not fewer than two-thirds of the  
43 voters voting in the election in which such proposed amendment  
44 or revision is considered. For purposes of this subsection, the  
45 phrase "significant additional spending" shall mean additional  
46 spending in any state fiscal year, prior to and including the  
47 first state fiscal year of full implementation of the amendment  
48 or revision, in an amount greater than one-tenth of one percent  
49 of the total state budget, as established in the General  
50 Appropriations Act approved by the Governor, for the state  
51 fiscal year ending in the calendar year prior to the year of the  
52 election in which such proposed amendment or revision is  
53 considered. The determination of whether a proposed amendment or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 revision would result in significant additional spending by  
55 state government shall be made and certified in accordance with  
56 general law. Any such proposed amendment or revision that fails  
57 to gain the two-thirds vote required by this subsection shall be  
58 null, void, and without effect.

59  
60  
61 ===== B A L L O T   S T A T E M E N T   A M E N D M E N T =====

62        Remove line(s) 79-118 and insert:

63        TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE  
64 OR RESULTING IN SIGNIFICANT SPENDING.--Under this measure  
65 proposing to amend the State Constitution, a proposed amendment  
66 or revision to the State Constitution that increases an existing  
67 state tax or fee would have to be approved by at least two-  
68 thirds of those voters voting in the election in which the  
69 amendment or revision is considered. For the purposes of this  
70 measure, "existing state tax or fee" means any tax or fee that  
71 produces revenue to state government. This measure would  
72 require that a proposed amendment or revision to the State  
73 Constitution that would result in significant additional  
74 spending by state government must be approved by at least two-  
75 thirds of those voters voting in the election in which the  
76 amendment or revision is considered. For the purposes of this  
77 measure, "significant additional spending" means additional  
78 spending in any state fiscal year, prior to and including the  
79 first state fiscal year of full implementation, in an amount  
80 greater than one-tenth of one percent of the total state budget,  
81 as established in the General Appropriations Act approved by the  
82 Governor, for the state fiscal year ending in the calendar year  
83 prior to the year of the election in which such proposed  
84 amendment or revision is considered. The determination of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 | whether a proposed amendment or revision would result in  
86 | significant additional spending by state government would be  
87 | made and certified in accordance with general law. This measure  
88 | adds to an existing provision of the Florida Constitution,  
89 | passed by Florida voters in 1996, that currently applies the  
90 | same two-thirds vote requirement only to a proposed amendment  
91 | that imposes a new state tax or fee. All other proposed  
92 | amendments or revisions presently must be approved by only a  
93 | simple majority of those voting on the proposal. The measure  
94 | also makes conforming changes in this section of the State  
95 | Constitution and repeals obsolete provisions relating to items  
96 | on the November 8, 1994, ballot.

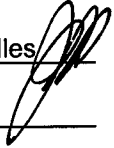
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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FT 06-07      **Assessment of Homestead Property**  
**SPONSOR(S):** Finance & Tax Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee		Monroe <i>KDM</i>	Diez-Arguelles 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

This bill is a joint resolution, proposing amendments to the Florida Constitution to change the taxable value of homestead property.

**Homestead Exemption** - This proposal would raise the current homestead exemption from \$25,000 to \$50,000. This increase would be phased in over five years. Thus, the homestead exemption would be increased to \$30,000 in 2007, \$35,000 in 2008, \$40,000 in 2009, \$45,000 in 2010, and \$50,000 in 2011. Thereafter, the homestead exemption would increase by the percentage change in the Consumer Price Index.

**Save Our Homes** – This proposal would make three significant changes to how “Save Our Homes” currently operates. Under Article VII, s. 4, of the Florida Constitution, the “Save Our Homes” provision limits annual increase in homestead property values to 3 percent or the Consumer Price Index percentage, whichever is lower, not to exceed just value. If there is a change in ownership, the property is to be assessed at its just value on the following January 1. Section 193.155, F.S., implements this assessment limitation.

First, the bill would limit the differential between the assessed and just value of a homesteaded property to \$100,000 on January 1, 2007.

Second, property owners would be allowed to transfer the value of their differential, up to \$100,000, with them when they move within the same county, provided that the new homestead may not have a lower assessed value than the old homestead.

Finally, property owners with homesteads established before January 1, 2007 would be “grandfathered in” and the maximum differential on their homesteads would be the differential that existed on January 1, 2007, plus \$100,000.

**Schedule** - This proposal would also create Section 26 of Article XII in the State Constitution which would specifically provide that the provisions of the constitutional amendment would take effect January 1, 2007.

The Revenue Estimating Conference has yet to estimate the fiscal impact of this bill.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower Taxes** - Taxpayers who have homestead property will benefit from the increase in the homestead exemption and the transferability of the Save Our Homes differential by paying lower taxes. However, this will be a shift in who bears the tax burden and other taxpayers, such as those who do not have a homestead and those who are affected by the limitation on the Save Our Homes benefit, will bear an increased tax burden.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**

**Property Taxation in Florida** – The ad valorem tax or “property tax” is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. The taxable value of real and tangible personal property is the fair market value of the property adjusted for any exclusions, differentials or exemptions. Tax bills are mailed in November of each year based on the previous January 1<sup>st</sup> valuation and payment is due by the following March 31.

Ad valorem tax continues to be a major source of revenue for local governments in Florida. In FY 2002-03 (the last year for which certain fiscal information is available) property taxes constituted 31 percent of county governmental revenue (\$6.3 billion)<sup>1</sup>, and 17 percent of municipal governmental revenue (\$2.5 billion), making it the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for school districts. In FY 2003-04, school districts levied \$8.4 billion in property taxes for K-12 education.<sup>2</sup>

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.<sup>3</sup> However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.<sup>4</sup> In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions,<sup>7</sup> including the homestead exemptions.

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<sup>1</sup> Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at <http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls>.

<sup>2</sup> See 2005 Florida Tax Handbook, p. 135.

<sup>3</sup> See Art. VII, s. 1, Fla. Const.

<sup>4</sup> See Art. VII, s. 9, Fla. Const. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of taxable value.

<sup>5</sup> Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

<sup>6</sup> Article VII, s. 4(c) of the Florida Constitution, authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known

**Homestead Exemption** - The provision which is commonly referred to as the Homestead Exemption, is contained in Article VII, s. 6(a-d) of the Florida Constitution. It provides a \$25,000 homestead exemption for all owners of homestead property provided that the tax roll in their county has been approved. The \$25,000 amount was established in 1982 and has not been changed since then. If the amount of the homestead exemption had been increased by the percentage change in the Consumer Price Index since 1982, the current value of the Homestead Exemption would be \$50,596.

In addition, Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed \$20,000, adjusted for inflation. This is typically referred to as the Increased Homestead Exemption for Low Income Seniors.

Finally, Article VII, s. 6(e) of the Florida Constitution authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. However, this provision has been minimally implemented.<sup>8</sup>

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.<sup>9</sup> The courts have further ruled that this immunity extends to property of school districts<sup>10</sup> and certain special districts.<sup>11</sup>

In tax year 2006, the combination of these various forms of property tax relief is estimated to effectively reduce the taxable value of real property in this state by 31.9 percent.<sup>12</sup> For the 2006 tax year, it is estimated that at an aggregate average millage rate of 19.54, the tax revenue loss due to these forms of property tax relief will be \$1.1 billion for agricultural and other valuation differentials, \$6.7 billion for the "Save Our Homes" assessment limitation, and \$2.2 billion for the \$25,000 homestead exemption.<sup>13</sup>

Any additional reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.<sup>14</sup>

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as the "Granny Flats" assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devices (s. 193.621, F.S.) and building renovations for the physically handicapped (s. 193.623, F.S.).

<sup>7</sup> Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;
- Portions of property used predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
- Household goods and personal effects, not less than one thousand dollars;
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
- Property used for community and economic development, by local option and as defined by general law;
- Certain renewable energy source devices and real property on which the device is installed and operated; and
- Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>8</sup> This \$25,000 exemption is implemented in ss. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities.

<sup>9</sup> See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm'n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>10</sup> See *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>11</sup> See *Sarasota-Manatee Airport Auth. v. Mikos*, 605 So. 2d 132 (Fla. 2d DCA 1992). Cf. *Canaveral Port Auth. v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

<sup>12</sup> 2006 estimates are \$ 2,148.5 billion in just value, and \$ 1,463.4 billion in taxable value. Revenue Estimating Conference, Ad Valorem Estimating Conference, March 6, 2006. See EDR website at <http://edr.state.fl.us/conferences/advalorem/adval0306.pdf>

<sup>13</sup> See 2005 Florida Tax Handbook, p. 137-8.

<sup>14</sup> Generally, local governments respond to reductions in the property tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

**“Save Our Homes” Assessment Limitation** - Article VII, s. 4 of the Florida Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value.<sup>15</sup> However, section 4 also provides exceptions to this requirement, in the form of valuation differentials and assessment limitations: The most significant of which is the “Save Our Homes” assessment limitation. The annual increase in homestead property values is limited to 3 percent or the Consumer Price Index percentage, whichever is lower, not to exceed just value. If there is a change in ownership, the property is to be assessed at its just value on the following January 1. Section 193.155, F.S., implements this assessment limitation.

The “Save Our Homes” assessment limitation has benefited Florida homestead property owners in the form of reduced ad valorem taxes. However, the assessment limitation has had an unforeseen consequence. Rapidly escalating property values in many Florida communities have resulted in an environment where homeowners may be reluctant to sell their property and purchase new homes due to the often substantial increase in property taxes

### **Proposed Changes**

This bill is a joint resolution, proposing amendments to the Florida Constitution to change the taxable value of homestead property.

**Homestead Exemption** - This proposal would raise the current homestead exemption from \$25,000 to \$50,000. This increase would be phased in over five years. Thus, the homestead exemption would be increased to \$30,000 in 2007, \$35,000 in 2008, \$40,000 in 2009, \$45,000 in 2010, and \$50,000 in 2011. Thereafter, the homestead exemption would increase by the percentage change in the Consumer Price Index.

**Save Our Homes** – This proposal would make three significant changes to how “Save Our Homes” currently operates.

First, the bill would limit the differential between the assessed and just value of a homesteaded property to \$100,000 on January 1, 2007.

Second, property owners would be allowed to transfer the value of their differential, up to \$100,000, with them when they move within the same county, up to \$100,000, provided that the new homestead may not have a lower assessed value than the old homestead.

Finally, property owners with homesteads established before January 1, 2007 would be “grandfathered in” and the maximum differential on their homesteads would be the differential that existed on January 1, 2007, plus \$100,000.

**Schedule** - This proposal would also create Section 26 of Article XII in the State Constitution which would specifically provide that the provisions of the constitutional amendment would take effect January 1, 2007.

#### **C. SECTION DIRECTORY:**

This is not applicable to Joint Resolutions.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>15</sup> See *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

1. Revenues:

None

2. Expenditures:

**Non-Recurring**

**FY 2006-07**

Department of State, Division of Elections  
Publications Costs<sup>16</sup>

\$50,000

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill should have a major impact on local revenue sources; however, the bill has yet to be reviewed by the Revenue Estimating Conference.

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will result in a shift of tax burden from certain homestead property owners to all other taxpayers.

**D. FISCAL COMMENTS:**

Article XI, s. 5(d) of the State Constitution, requires the state to publish the proposed amendment along with notice of the date of the election at which it will be submitted before electors in one newspaper in each county in which a newspaper is published once in the tenth week and once in the sixth week immediately preceding the week the election is held. The Division of Elections estimates this cost to be approximately \$50,000 to meet the requirements of this provision.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This is not applicable to joint resolutions.

2. Other:

Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

<sup>16</sup> See Art. XI, Sec. 5(d), Fla. Const.  
STORAGE NAME: pcb07.FT.doc  
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None

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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PCB FT 06-07

Redraft - A

YEAR

House Joint Resolution

A joint resolution proposing amendments to Sections 4 and 6 of Article VII and the creation of Section 26 of Article XII of the State Constitution to limit the difference between the just value and the assessed value for homestead property, provide for assessing newly established homestead property at less than just value subject to a limitation, and increase the amount of the homestead exemption from \$25,000 to \$50,000.

Be It Resolved by the Legislature of the State of Florida:

That the following amendments to Sections 4 and 6 of Article VII and the creation of Section 26 of Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for

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taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) The difference between just value and assessed value shall not exceed \$100,000 unless the provisions of paragraph (10) apply.

(4)~~(3)~~ After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (9) apply. Thereafter, the homestead shall be assessed as provided herein.

(5)~~(4)~~ New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (9) apply. That assessment shall only change as provided herein.

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59        ~~(6)(5)~~ Changes, additions, reductions, or improvements to  
60 homestead property shall be assessed as provided for by general  
61 law; provided, however, after the adjustment for any change,  
62 addition, reduction, or improvement, the property shall be  
63 assessed as provided herein.

64        ~~(7)(6)~~ In the event of a termination of homestead status,  
65 the property shall be assessed as provided by general law.

66        ~~(8)(7)~~ The provisions of this amendment are severable. If  
67 any of the provisions of this amendment shall be held  
68 unconstitutional by any court of competent jurisdiction, the  
69 decision of such court shall not affect or impair any remaining  
70 provisions of this amendment.

71        (9) When a person sells or transfers his or her homestead  
72 within this state and within one year establishes within the same  
73 county another property as his or her new homestead, the newly  
74 established homestead property shall be initially assessed at  
75 less than just value, as provided by general law. The difference  
76 between the new homestead property's just value and its assessed  
77 value in the first year the homestead is established shall equal  
78 the difference between the prior homestead property's just value  
79 and its assessed value in the year of sale or transfer, provided  
80 the difference does not exceed \$100,000. However, in no case  
81 shall this adjustment result in the new homestead property having  
82 an assessed value less than the assessed value of the previous  
83 homestead property. Thereafter, the homestead property shall be  
84 assessed as provided herein.

85        (10) For a homestead established before January 1, 2007,  
86 the difference between just value and assessed value may not



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87 | exceed the difference between just value and assessed value that  
88 | exists on January 1, 2007, plus \$100,000.

89 |       (d) The legislature may, by general law, for assessment  
90 | purposes and subject to the provisions of this subsection, allow  
91 | counties and municipalities to authorize by ordinance that  
92 | historic property may be assessed solely on the basis of  
93 | character or use. Such character or use assessment shall apply  
94 | only to the jurisdiction adopting the ordinance. The requirements  
95 | for eligible properties must be specified by general law.

96 |       (e) A county may, in the manner prescribed by general law,  
97 | provide for a reduction in the assessed value of homestead  
98 | property to the extent of any increase in the assessed value of  
99 | that property which results from the construction or  
100 | reconstruction of the property for the purpose of providing  
101 | living quarters for one or more natural or adoptive grandparents  
102 | or parents of the owner of the property or of the owner's spouse  
103 | if at least one of the grandparents or parents for whom the  
104 | living quarters are provided is 62 years of age or older. Such a  
105 | reduction may not exceed the lesser of the following:

106 |       (1) The increase in assessed value resulting from  
107 | construction or reconstruction of the property.

108 |       (2) Twenty percent of the total assessed value of the  
109 | property as improved.

110 |       SECTION 6. Homestead exemptions.--

111 |       (a) Every person who has the legal or equitable title to  
112 | real estate and maintains thereon the permanent residence of the  
113 | owner, or another legally or naturally dependent upon the owner,  
114 | shall be exempt from taxation thereon, except assessments for  
115 | special benefits, up to the assessed valuation of five thousand

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dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c)1. By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts ~~twenty-five thousand dollars~~ of the assessed value of the real estate for each school district levy: thirty thousand dollars with respect to 2007 assessments; thirty-five thousand dollars with respect to 2008 assessments; forty thousand dollars with respect to 2009 assessments; forty-five thousand dollars with respect to 2010 assessments; and fifty thousand dollars with respect to 2011 assessments. In 2012 and each year thereafter, the exemption shall increase annually by the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

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145        2. By general law and subject to conditions specified  
146 therein, the exemption for all other levies may be increased up  
147 to an amount not exceeding ten thousand dollars of the assessed  
148 value of the real estate if the owner has attained age sixty-five  
149 or is totally and permanently disabled and if the owner is not  
150 entitled to the exemption provided in subsection (d).

151        (d) By general law and subject to conditions specified  
152 therein, the exemption shall be increased to a total of the  
153 following amounts of assessed value of real estate for each levy  
154 other than those of school districts: thirty fifteen thousand  
155 dollars with respect to 2007 ~~1980~~ assessments; thirty-five ~~twenty~~  
156 thousand dollars with respect to 2008 ~~1981~~ assessments; forty  
157 ~~twenty-five~~ thousand dollars with respect to 2009 assessments;  
158 forty-five thousand dollars with respect to 2010 assessments; and  
159 fifty thousand dollars for 2011 assessments. In 2012 ~~for 1982~~ and  
160 each year thereafter, the exemption shall increase annually by  
161 the percentage change in the Consumer Price Index for all urban  
162 consumers, U.S. City Average, all items 1967=100, or successor  
163 reports for the preceding calendar year as initially reported by  
164 the United States Department of Labor, Bureau of Labor  
165 Statistics. However, such increase shall not apply with respect  
166 to any assessment roll until such roll is first determined to be  
167 in compliance with the provisions of section 4 by a state agency  
168 designated by general law. This subsection shall stand repealed  
169 on the effective date of any amendment to section 4 which  
170 provides for the assessment of homestead property at a specified  
171 percentage of its just value.

172        (e) By general law and subject to conditions specified  
173 therein, the Legislature may provide to renters, who are

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174 permanent residents, ad valorem tax relief on all ad valorem tax  
175 levies. Such ad valorem tax relief shall be in the form and  
176 amount established by general law.

177 (f) The legislature may, by general law, allow counties or  
178 municipalities, for the purpose of their respective tax levies  
179 and subject to the provisions of general law, to grant an  
180 additional homestead tax exemption not exceeding twenty-five  
181 thousand dollars to any person who has the legal or equitable  
182 title to real estate and maintains thereon the permanent  
183 residence of the owner and who has attained age sixty-five and  
184 whose household income, as defined by general law, does not  
185 exceed twenty thousand dollars. The general law must allow  
186 counties and municipalities to grant this additional exemption,  
187 within the limits prescribed in this subsection, by ordinance  
188 adopted in the manner prescribed by general law, and must provide  
189 for the periodic adjustment of the income limitation prescribed  
190 in this subsection for changes in the cost of living.

191 ARTICLE XII

192 SCHEDULE

193 SECTION 26. Homestead property assessment limitations;  
194 increased homestead exemption.--The amendments to Sections 4 and  
195 6 of Article VII, modifying the limitations on the assessment of  
196 homestead property and increasing the amount of the homestead  
197 exemption, shall take effect January 1, 2007.

198 BE IT FURTHER RESOLVED that the following statement be  
199 placed on the ballot:

200 CONSTITUTIONAL AMENDMENT

201 ARTICLE VII, SECTIONS 4 AND 6

202 ARTICLE XII, SECTION 26

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PCB FT 06-07

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YEAR

203           ASSESSMENT OF HOMESTEAD PROPERTY.--Proposing amendments to  
204 the State Constitution to limit the difference between the just  
205 value and the assessed value of homestead property to \$100,000  
206 except property established as homestead property before January  
207 1, 2007, for which the difference between just value and assessed  
208 value may not exceed the difference between just value and  
209 assessed value existing on January 1, 2007, plus \$100,000;  
210 provide that homeowners who move from one homestead property to  
211 another in the same county would have the new homestead property  
212 assessed at up to \$100,000 less than just value depending on the  
213 differential between the just value and the assessed value of  
214 their previous homestead property; provide for a phased increase  
215 in the exemption for homestead property from \$25,000 to \$50,000  
216 over 5 years; and schedule the amendments to take effect January  
217 1, 2007, if adopted.

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance & Tax Committee  
Representative(s) Domino offered the following:

**Amendment (with ballot statement and title amendments)**

Remove line(s) 47-49.

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

Remove line(s) 205 and 206 and insert:

value and the assessed value of property established as  
homestead property before January

===== T I T L E A M E N D M E N T =====

Remove line(s) 4-6 and insert:

XII of the State Constitution, provide for assessing newly

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance & Tax Committee  
Representative(s) Domino offered the following:

**Amendment (with ballot statement and title amendments)**

Remove line(s) 79-80 and insert:  
and its assessed value in the year of sale or transfer.  
However, in no case

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

Remove line 212 and insert:  
assessed at less than just value depending on the

===== T I T L E A M E N D M E N T =====

Remove line 8 and insert:  
and increase the amount of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES  
Amendment No. (for drafter's use only) **3**

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COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Finance & Tax Committee  
Representative(s) Domino offered the following:

**Amendment (with ballot statement and title amendments)**

Remove line(s) 85-88.

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

Remove line(s) 206-209 and insert:

;





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FT 06-08      Expenditure Limits  
**SPONSOR(S):** Finance & Tax Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee		Monroe <i>KDSM</i>	Diez-Arguelles <i>[Signature]</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

This joint resolution would provide specific authorization for the Legislature to impose an expenditure cap on counties and municipalities. Under the terms of the constitutional amendment the expenditure limitation would have to make a provision for growth in the annual expenditure limitation which equals or exceeds the growth in Florida personal income. In addition, the amendment would require that provisions be made to permit waiver of the expenditure limitation if:

- the Governor declares a state of emergency,
- the electorate approves the additional expenditures by referendum, or
- the additional expenditures are approved by a supermajority of the governing body of the municipality or county.

The Division of Elections estimates the cost to the state to be approximately \$50,000 to meet constitutional requirements to publish this joint resolution to the electorate

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Not Applicable

#### B. EFFECT OF PROPOSED CHANGES:

##### Background:

For the period 1983 to 2003, data shows a significant increase in the expenditures of counties and municipalities.<sup>1</sup> In 1983, expenditures totaled \$5,205,143,611 for counties and \$4,327,322,797 for municipalities. By 1993 total expenditures reached \$11,767,269,903 for counties and \$8,841,094,865 for municipalities. These numbers reflect a 126.07% increase in county expenditures and a 104.31% increase in municipal expenditures over 10 years. In 2003 the counties spent \$21,400,225,783 and municipalities spent \$15,517,153,759. This shows an 81.86% increase since 1993 and a 311.14% increase since 1983 in county expenditures. Municipal expenditures grew 75.51% between 1993 and 2003 and 258.59% between 1983 and 2003.

##### Proposed Changes:

This joint resolution would provide specific authorization for the Legislature to impose an expenditure cap on counties and municipalities. Under the terms of the constitutional amendment the expenditure limitation would have to make a provision for growth in the annual expenditure limitation which equals or exceeds the growth in Florida personal income. In addition, the amendment would require that provisions be made to permit waiver of the expenditure limitation if:

- the Governor declares a state of emergency,
- the electorate approves the additional expenditures by referendum, or
- the additional expenditures are approved by a supermajority of the governing body of the municipality or county.

#### C. SECTION DIRECTORY:

Not applicable to Joint Resolutions

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None

##### 2. Expenditures:

##### Non-Recurring

FY 2006-07

Department of State, Division of Elections

<sup>1</sup> Legislative Committee on Intergovernmental Relations, Expenditures and Revenues Reported by Counties, Municipalities, and Independent Special Districts: Fiscal Years 1979-2003, See <http://fcn.state.fl.us/lcir/stwidefiscal.html>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:****1. Revenues:**

None

**2. Expenditures:**

Although the bill would specifically authorize the State Legislature to impose expenditure limits on counties and municipalities in the future, the Constitutional amendment itself would have no effect on local expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

Article XI, s. 5(d) of the State Constitution, requires the state to publish the proposed amendment along with notice of the date of the election at which it will be submitted before electors in one newspaper in each county in which a newspaper is published once in the tenth week and once in the sixth week immediately preceding the week the election is held. The Division of Elections estimates this cost to be approximately \$50,000 to meet the requirements of this provision.

**III. COMMENTS****A. CONSTITUTIONAL ISSUES:****1. Applicability of Municipality/County Mandates Provision:**

The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

**2. Other:**

Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

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<sup>2</sup> See Art. XI, Sec. 5(d), Fla. Const.  
STORAGE NAME: pcb08.FT.doc  
DATE: 3/24/2006

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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PCB FT 06-08

ORIGINAL

YEAR

House Joint Resolution

A joint resolution proposing the creation of Section 19 of Article VII of the State Constitution to limit the expenditures of counties and municipalities by general law subject to certain exceptions.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 19 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 19. Limitation on county and municipal expenditures.--A limitation on county and municipal expenditures may be imposed by general law, provided:

(a) A provision for annual growth in the expenditure limitation is made, which growth must equal or exceed the growth in Florida personal income.

(b) Provisions for waiving the expenditure limitation are made if:

(1) The Governor declares an emergency;

(2) The electors of the county or municipality approve the additional expenditures by referendum; or

(3) The additional expenditures are approved by a supermajority vote of the governing body of the county or municipality.

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PCB FT 06-08

ORIGINAL

YEAR

30           BE IT FURTHER RESOLVED that the following statement be  
31 placed on the ballot:  
32                       CONSTITUTIONAL AMENDMENT  
33                       ARTICLE VII, SECTION 19  
34           LIMITATION ON COUNTY AND MUNICIPAL EXPENDITURES.--Proposing  
35 an amendment to the State Constitution to authorize the  
36 Legislature to impose a limitation on expenditures of counties  
37 and municipalities by general law, subject to providing for  
38 annual growth in the limitation and waiving the limitation if the  
39 Governor declares an emergency or additional expenditures are  
40 approved by municipal or county electors by referendum or by the  
41 municipal or county governing body by a supermajority vote.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FT 06-09      Property Tax Administration  
**SPONSOR(S):** Finance & Tax Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee		Monroe <i>KDSM</i>	Diez-Arguelles <i>[Signature]</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

Currently, counties and municipalities may levy a millage rate up to the maximum amount specified by law.<sup>1</sup> Under this bill any local government which levies a millage rate in excess of the rolled back rate, adjusted by the sum of the percentage change in the Consumer Price Index plus 3%, will lose its right to half cent sales tax revenue sharing under section 218.63, F.S. The bill further provides that instructions on how to calculate the millage rate at which the loss of revenue sharing dollars would occur must be included in the information the property appraiser provides to the local government before it sets its proposed millage rate.

The bill also provides that a majority plus one vote of the local governing body is required in order to levy a millage rate which would result in the loss of revenue sharing.

Finally, the bill instructs the Department of Revenue to contract with the Usability Center at Florida State University to study the notice of proposed taxes (TRIM notice). The study is to determine if the current notice is effectively conveying its information to taxpayers, and propose an alternative form if the current notice is deemed ineffective. The results from this study are to be presented to the Governor, the Speaker of the House of Representatives, and the President of the Senate by December 15, 2006.

A \$50,000 appropriation from the General Revenue Fund is included in the bill for the purposes of paying for the usability study.

The fiscal impact of this bill is indeterminate since the number of taxing authorities which will levy a millage rate that will result in a loss of Revenue Sharing dollars cannot be accurately predicted.

The bill shall take effect upon becoming law.

<sup>1</sup> Under Art. VII, s. 9, Fla. Const. For county purposes, municipal purposes, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** pcb09.FT.doc  
**DATE:** 3/24/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower Taxes** – Because this bill provides a fiscal incentive to local governments not to raise millage rates beyond a specified amount, it should result in lower taxes levied. In addition, the majority plus one vote requirement on larger tax increases should also encourage local governments to impose lower tax rates.

#### B. EFFECT OF PROPOSED CHANGES:

##### Millage Rates and Revenue Sharing

###### **Background:**

Currently, counties and municipalities may levy any millage rate up to the maximum amount specified by law. For county purposes, municipal purposes, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law.<sup>2</sup> However, if the tax rate being levied is in excess of the “rolled back rate”, that is the rate which would generate the same amount of revenue, exclusive of certain changes in the tax base<sup>3</sup>, the local taxing authority must advertise a tax increase, even if the millage rate being levied is lower than the previous year’s rate.

The property tax is the single largest income source for cities and counties and it has been producing a rapidly increasing amount of revenue. In 1983 the property tax produced \$1,320,702,577 for counties and \$563,554,296 for municipalities. By 1993 the property tax produced \$3,560,560,785 for counties and \$1,399,123,949 for municipalities. These numbers reflect a 269.6% increase in county property tax revenues and a 248.3% increase in municipal property tax revenues over 10 years. In 2003 the counties raised \$6,303,699,402 from the property tax and municipalities raised \$2,525,204,276. This shows a 177.0% increase since 1993 and a 447.3% increase since 1983 in county property tax revenues. Municipal property tax revenues grew 180.5% between 1993 and 2003 and 448.1% between 1983 and 2003.

Another significant revenue source for local governments is state revenue shared with cities and counties, which primarily is funded by a half-cent of sales tax proceeds. Distributions to local governments are predicted to total \$1.7 billion in the fiscal year ending September 30, 2006. For counties the amounts received will range from \$391,253 for Lafayette County to \$119,837,298 for Orange County. Similarly the amounts distributed to cities will range from \$463 for Weeki Wachee to \$28,019,807 for Orlando.

###### **Proposed Changes:**

Under this bill any local government which levies a millage rate in excess of the rolled back rate, adjusted by the sum of the percentage change in the Consumer Price Index plus 3%, will lose its right to revenue sharing under section 218.63, F.S.

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<sup>2</sup> Under Art. VII, s. 9, Fla. Const

<sup>3</sup> As specified in section 200.065(1), F.S., the rolled-back rate is that “millage rate which, exclusive of new construction, additions in structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same amount of ad valorem tax revenue” for the taxing authority.

The bill further provides that instructions on how to calculate the millage rate at which the loss of revenue sharing dollars would occur must be included in the information the property appraiser provides to the local government before it sets its proposed budget.

Also, the bill provides that a majority plus one vote of the local governing board is required in order to levy a millage rate which would result in the loss of revenue sharing.

## **TRIM NOTICE**

### **Background:**

Colloquially known as the "TRIM" notice<sup>4</sup>, the Notice of Proposed Property Taxes and Non-Ad Valorem Assessments provides property owners with information regarding the appraisal of their property, the exemptions they have been granted, proposed property tax levies, and notification of upcoming public meetings regarding local government budgets. In short, this notice is the primary means by which the public is informed about the property tax and how it affects them. The form of this notice is outlined in Section 200.069, F.S.

The TRIM notice was originally designed in 1980. Since then numerous changes have been made to add additional information to the notice but there has never been any formal study of how well the TRIM notice conveys the information it was intended to convey. These points were made in a 2002 interim report by the Committee on Fiscal Policy and Resources<sup>5</sup> which recommended, in part, that "a usability study of the TRIM notice should be considered. Such a study could address how well the TRIM notice conveys the information it is intended to convey. Moreover, it could consider how to best deal with non-ad valorem assessments, and evaluate the effectiveness of the rolled-back rate as currently used."

### **Proposed Changes:**

The bill instructs the Department of Revenue to contract with the Usability Center at Florida State University to study the TRIM notice, determine if it is effectively conveying its information to taxpayers, and propose an alternative form if the TRIM notice is deemed ineffective. The bill contains a list of the information that is intended to be conveyed to the taxpayer by the TRIM notice. That list includes:

- The just value of the subject property and how that value has changed from the previous year.
- The taxable value of the subject property and how that value has changed from the previous year.
- An accounting for the differences, such as exemptions, between the just value and the taxable value.
- The identities of all taxing authorities which will be levying taxes against the subject property.
- A measure of how much changes in the taxing authorities' budgets are responsible for changing the taxes due on the property.
- Information on where and when the property owner may provide input on said budget changes.
- Information as to how the property owner may challenge the assessment of their property.
- Information regarding tax deferral, estimated tax prepayment, and other programs intended to assist taxpayers.
- Other information that the usability study finds would assist taxpayers in better understanding the property tax system and how it affects their tax liability.

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<sup>4</sup> This common name came from "Truth in Millage" which was the popular name of the legislation which created this notice.

<sup>5</sup> Florida House of Representatives, Committee on Fiscal Policy and Resources, Interim Report: The TRIM Notice and Process, dated October 28, 2002

The results from this study are to be presented to the Governor, the Speaker of the House of Representatives, and the President of the Senate by December 15, 2006.

The bill includes a \$50,000 appropriation from the General Revenue Fund to pay for this study.

**C. SECTION DIRECTORY:**

Section 1 amends Section 218.63, F.S., to specify that a local government which levies a tax rate in excess of the rolled back rate, adjusted by the sum of the percentage change in the Consumer Price Index plus 3% shall not be eligible to receive revenue sharing from the half-cent sales tax proceeds.

Section 2 amends Section 200.065, F.S., to provide that the property appraiser shall provide to local taxing authorities instructions on how to calculate the millage rate which would result in a loss of revenue sharing dollars. The section further provides that a majority plus one vote is required in order to levy a millage rate which would result in the loss of revenue sharing.

Section 3 instructs the Department of Revenue to contract with the Usability Center at Florida State University to study the TRIM notice, determine if it is effectively conveying its information to taxpayers, and propose an alternative form if the TRIM notice is deemed ineffective. The final results from this study are to be presented to the Governor, the Speaker of the House, and the President of the Senate by December 15, 2006.

Section 4 contains an appropriation of \$50,000 from the General Revenue Fund for the purpose of paying for the usability study.

Section 5 provides that the bill shall take effect upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

This bill appropriates \$50,000 from the General Revenue Fund to the Department of Revenue to pay for a study.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Local Governments which raise their millage rates in excess of the limits prescribed in this bill will lose revenue sharing funds from the half cent sales tax under section 218.63, F.S.

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

None

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require cities or counties to spend funds or take actions requiring the expenditure of funds. However, because it does impose a majority plus one vote requirement on raising millage rates beyond a certain amount, it could be construed as reducing the authority that cities or counties have to raise revenues in the aggregate. As such, it is recommended that this bill be approved by a two-thirds vote in each chamber.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

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A bill to be entitled

An act relating to property tax administration; amending s. 218.63, F.S.; prohibiting certain local governments from participating in the local government half-cent sales tax under certain circumstances; providing a methodology for calculating a maximum millage rate for such local governments under certain circumstances; amending s. 200.065, F.S.; requiring a certification form to contain certain millage rate computation instructions relating to loss of eligibility to participate in the local government half-cent sales tax; specifying a required vote to adopt a certain millage rate; requiring the Department of Revenue to employ the Usability Center at Florida State University for certain property tax and non-ad valorem assessment notice study purposes; providing study requirements; specifying notice requirements; requiring a report to the Governor and Legislature; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) is added to section 218.63, Florida Statutes, to read:

218.63 Participation requirements.--

(3) (a) If a unit of local government levies in any year a millage rate, not including any millage levied pursuant to a referendum held in that year, in excess of the maximum millage rate as calculated in paragraph (b), that unit of local

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government may not participate in the local government half-cent sales tax during the next state fiscal year.

(b) The maximum millage rate under paragraph (a) shall be calculated as the rolled-back rate as defined in s. 200.065, adjusted by the sum of the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics, plus 3 percentage points.

Section 2. Subsection (1) and paragraph (e) of subsection (2) of section 200.065, Florida Statutes, are amended to read:

200.065 Method of fixing millage.--

(1) Upon completion of the assessment of all property pursuant to s. 193.023, the property appraiser shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. This certification shall include a copy of the statement required to be submitted under s. 195.073(3), as applicable to that taxing authority. The form on which the certification is made shall include instructions to each taxing authority describing the proper method of computing a millage rate which, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. That millage rate shall be known as the "rolled-back rate." The form must also include instructions to each taxing authority describing the proper

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method of computing a millage rate that would result in a loss of eligibility to participate in the local government half-cent sales tax under s. 218.63, if applicable. The information provided pursuant to this subsection shall also be sent to the tax collector by the property appraiser at the time it is sent to each taxing authority.

(2) No millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority which resolution or ordinance must be approved by the taxing authority according to the following procedure:

(e)1. In the hearings required pursuant to paragraphs (c) and (d), the first substantive issue discussed shall be the percentage increase in millage over the rolled-back rate necessary to fund the budget, if any, and the specific purposes for which ad valorem tax revenues are being increased. During such discussion, the governing body shall hear comments regarding the proposed increase and explain the reasons for the proposed increase over the rolled-back rate. The general public shall be allowed to speak and to ask questions prior to adoption of any measures by the governing body. The governing body shall adopt its tentative or final millage rate prior to adopting its tentative or final budget. A majority plus one vote of the governing body shall be required to adopt a tentative or final millage rate in excess of the maximum millage rate set forth in s. 218.63(3)(b).

2. These hearings shall be held after 5 p.m. if scheduled on a day other than Saturday. No hearing shall be held on a Sunday. The county commission shall not schedule its hearings on days scheduled for hearings by the school board. The hearing



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87 | dates scheduled by the county commission and school board shall  
88 | not be utilized by any other taxing authority within the county  
89 | for its public hearings. A multicounty taxing authority shall  
90 | make every reasonable effort to avoid scheduling hearings on days  
91 | utilized by the counties or school districts within its  
92 | jurisdiction. Tax levies and budgets for dependent special taxing  
93 | districts shall be adopted at the hearings for the taxing  
94 | authority to which such districts are dependent, following such  
95 | discussion and adoption of levies and budgets for the superior  
96 | taxing authority. A taxing authority may adopt the tax levies for  
97 | all of its dependent special taxing districts, and may adopt the  
98 | budgets for all of its dependent special taxing districts, by a  
99 | single unanimous vote. However, if a member of the general public  
100 | requests that the tax levy or budget of a dependent special  
101 | taxing district be separately discussed and separately adopted,  
102 | the taxing authority shall discuss and adopt that tax levy or  
103 | budget separately. If, due to circumstances beyond the control of  
104 | the taxing authority, the hearing provided for in paragraph (d)  
105 | is recessed, the taxing authority shall publish a notice in a  
106 | newspaper of general paid circulation in the county. The notice  
107 | shall state the time and place for the continuation of the  
108 | hearing and shall be published at least 2 days but not more than  
109 | 5 days prior to the date the hearing will be continued.

110 |       Section 3.   The Department of Revenue shall hire the  
111 | Usability Center at Florida State University to perform a  
112 | usability study of the notice of proposed property taxes and non-  
113 | ad valorem assessments created under s. 200.069, Florida  
114 | Statutes. The study shall measure how effectively the current  
115 | notice conveys the information the notice is intended to convey

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116 and, if the notice is judged ineffective, propose an alternative  
117 method of conveying the information. The study shall be  
118 completed, and copies of the final results shall be presented to  
119 the Governor, the Speaker of the House of Representatives, and  
120 the President of the Senate, by December 15, 2006. For the  
121 purpose of this study, the list of information intended to be  
122 conveyed by the notice shall include, but not be limited to:

123 (1) The just value of the subject property and how that  
124 value has changed from the previous year.

125 (2) The taxable value of the subject property and how that  
126 value has changed from the previous year.

127 (3) An accounting for the differences, such as exemptions,  
128 between the just value and the taxable value.

129 (4) The identities of all taxing authorities that will be  
130 levying taxes against the subject property.

131 (5) A measure of how much changes in the taxing  
132 authorities' budgets are responsible for changing the taxes due  
133 on the property.

134 (6) Information on where and when the property owner may  
135 provide input on such budget changes.

136 (7) Information as to how a property owner may challenge  
137 the assessment of the owner's property.

138 (8) Information regarding tax deferral, estimated tax  
139 prepayment, and other programs intended to assist taxpayers.

140 (9) Any other information that the usability study finds  
141 would assist taxpayers in better understanding the property tax  
142 system and how the system affects their tax liability.

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143           Section 4. The sum of \$50,000 is appropriated from the  
 144 General Revenue Fund to the Department of Revenue for the purpose  
 145 of funding the usability study required under section 3.  
 146           Section 5. This act shall take effect upon becoming a law.